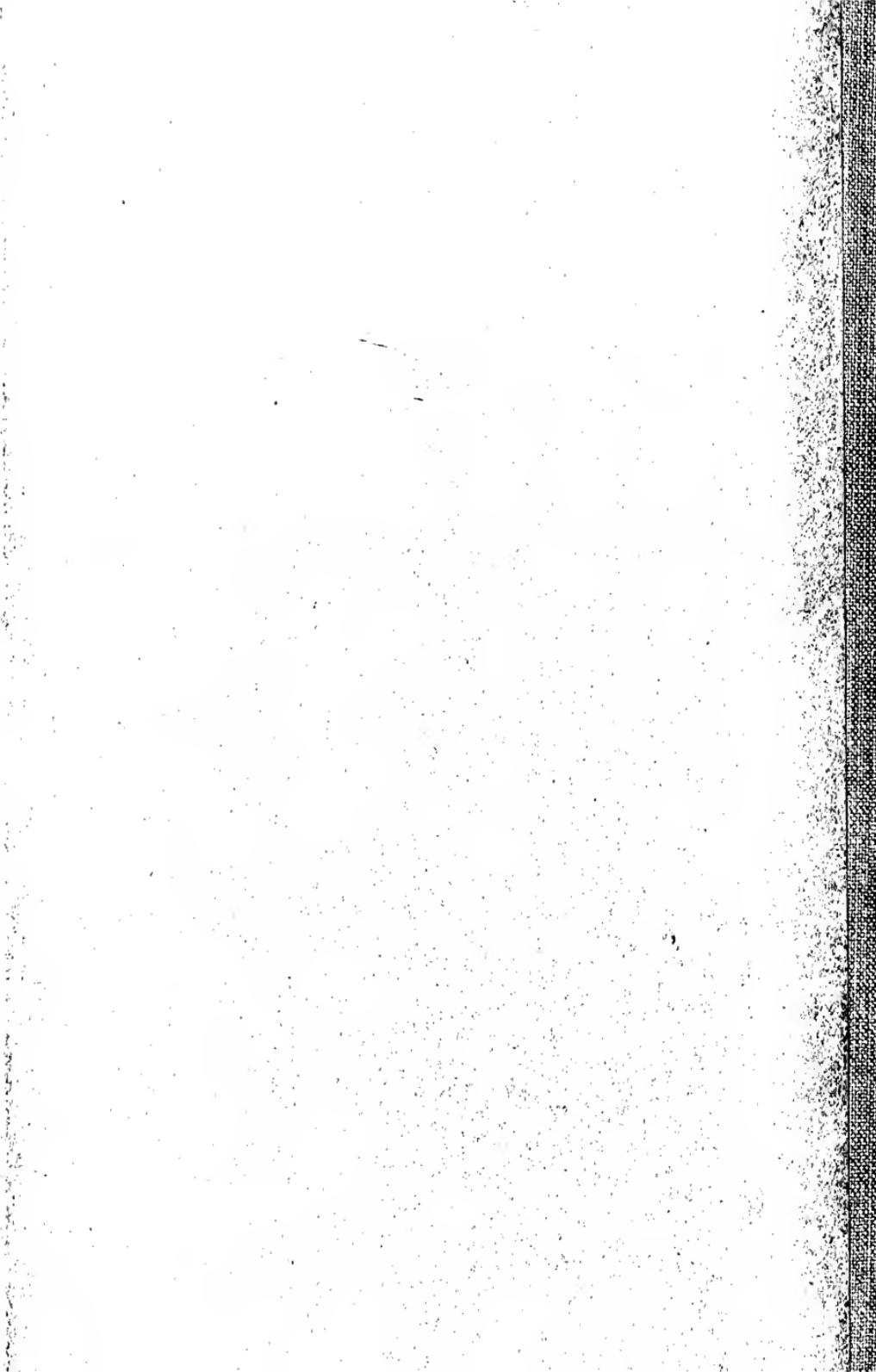


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# I

## HISTORY OF THE TRANSITION FROM PROVINCIAL TO COMMON- WEALTH GOVERNMENT IN MASSACHUSETTS



*STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW*

EDITED BY

THE FACULTY OF POLITICAL SCIENCE OF COLUMBIA  
UNIVERSITY IN THE CITY OF NEW YORK.

Volume VII]

[Number 1

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HISTORY OF THE TRANSITION

FROM

PROVINCIAL TO COMMONWEALTH GOVERNMENT

IN MASSACHUSETTS

BY

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NEW YORK

1896

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## CHAPTER I

### THE PERIOD OF TRANSITION

#### § 1. *The Transition, in General*

THE American Revolution presents two significant and clearly defined series of events. The earlier and not less important includes successive attempts to terminate certain administrative relations and constituent connections, attempts which resulted not simply in the temporary cessation of governmental relations, but also in the severance of a part of the American dependencies from the English empire. Almost contemporaneously with these events appeared great activity in that work of establishing governments which made the earlier effort of the revolutionists effective and its results permanent. In what was logically the earlier of these two movements, successful revolt annihilated all imperial relations. Those who were one day colonists of England, and who the next were by their own sweeping and comforting philosophy relegated to a "state of nature,"<sup>1</sup> began to act,

<sup>1</sup> This theory appears prominently in 1780. Cf. Oration by Jonathan Mason, Jr., at Boston, March 6, 1780: "As a reward for our exertions in the great cause of freedom, we are now in the possession of those rights and privileges attendant upon the original state of nature, with the opportunity of establishing a government for ourselves, independent upon any nation or people upon earth." Niles, *Principles and Acts*, 46.

Cf. Oration by Thomas Dawes, Jr., at Boston, March 5, 1781: "And yet the people of Massachusetts have reduced to practice the wonderful theory. A numerous people have convened in a state of nature, and, like *our ideas* of the patriarchs, have deputed a few fathers of the land to draw up for them a glorious covenant." *Ibid.*, 52. "Johannes in Eremo" published a letter to General Gage, June 17, 1775, in which he said: "You also know that those acts of the

with a growing self-consciousness, as component parts of what was by territorial and geographical arrangement, by race and language, by religion and by political traditions, the germ of a new national state.<sup>1</sup> That such was the position of the Americans at the time of the Revolution the history of the nation has made evident. The striking feature of the constitutional rearrangement within the nation at its beginning was the appearance of the Continental Congress, a body among whose acquired functions was recognized the responsibility and right to represent that greater body of individuals in whom had become vested all those elements and incidents of national sovereignty which had formerly appertained to the king in parliament. That the best and plainest outcome of the Revolution was the rise of a new nation is the lesson which by the progress of events has been impressed upon a people who, by reasoning and by warfare, have been made believers in the nationalism of the federalists.

Yet while to the maturer life of the nation the sentiment of nationality born of the Revolution has been of incalculable import, it played a relatively less important part in the later stages of that movement amid which it first arose. The

British parliament, which you have avowedly undertaken to carry into execution against us by fire and sword, are, in the [sic] own nature and operation, offensive acts of hostility against law, English liberty and constitutional government of the nation in general, and against the charter, laws, liberty, property and lives of this colony in particular." In the opinion of the writer the enforcement of such acts put the inhabitants in a "state of nature," without any connection with the English king. The taking of arms would no longer be rebellion. Gage was no longer governor, and, furthermore, "not only a robber, a murderer and usurper, but a wicked Rebel: . . ." *Essex Gazette*, vol. VII., no. 363, July "6-13," 1775. Cf. Benj. Akin, Dartmouth, July 29, 1774, to Samuel Adams, Boston: "it Appears to me, if there is any force in the Late acts. of Parliament. they have Sett us, a float. that is, have thrown us into a State of Nature: we Now have a fair Opportunity of Choosing what form of Goverment we think proper. and, Contract, with any Nation, we pleas; for a King to Rule over us." *Revolutionary Corresp.*, III., 277, Bancroft Collection, Lenox Library.

<sup>1</sup> Cf. Burgess, *Political Science and Comparative Constitutional Law*, I., 100.

enthusiasm of being “an American” could win battles, and it could meet well its test at the time which “Novanglus” foresaw, when recourse must be had “to the *ratio ultima* of Louis XIV. and the *suprema lex* of the king of Sardinia,—to the law of brickbats and cannon balls, which can be answered only by brickbats and balls.”<sup>1</sup> The military and diplomatic successes of the Revolution must be recognized and their value fitly estimated. But what seems a successful revolt is not always a successful revolution. To take full advantage of the good work on the field and in the cabinet a firmly established and well organized government was essential. Such to the central body, the Continental Congress, was unknown; such, in large measure, was present in each of those territories which from colonies had become commonwealths. The prominence and incapacity of the central government in the years immediately subsequent to the military crisis were in strong contrast with the efficiency and the quiet conservatism shown by those bodies of the people who had come forth from the constructive work of the first years of the Revolution organized as political units. In territorial arrangement these portions of the population, with one exception,<sup>2</sup> coincided with the earlier colonies. Among their inhabitants as colonists had occurred those

<sup>1</sup> *Works* of John Adams, iv. 38.

<sup>2</sup> Vermont is the exception here referred to. The earlier relations between the New Hampshire Grants and the royal colonies of New Hampshire, New York, and Massachusetts, make the history of the origin of Vermont somewhat complicated. It is not necessary in the present work to enter into any explanation of the subject, although the subsequent grouping of the Vermont Constitution of 1777 with the other constitutions of the period may seem to require justification, since at the time Vermont was not recognized as a state, as a part of the American system. However, the theories on which the acts of the inhabitants of that region were based were in many respects identical with the theories dominant elsewhere on the continent, and the result of work under such conditions may properly be grouped with similar results elsewhere, it being understood that no identity of constitutional procedure is necessarily implied.

events, some violent in character, which have already been broadly classified as the destructive phase of the Revolution; and among each group, acting still on the accustomed lines of political sub-division, had arisen, contemporaneously with the immediate beginnings of nationality already noticed, the more valuable and constructive work, the creation of commonwealth governments. To these is due no small meed of credit for affording the nation some degree of stability and order during the period when the ostensibly national government was in the slough of administrative inefficiency and disintegrating sectionalism; to them are to be traced many features of the later national constitution. In them was brought together the content of the charters, the legislation, and the custom of the past, and with them began the modern period wherein the written constitution appears as a basis of government.

In no country has a period so brief been marked by the promulgation of so many constitutions as the decade of the American Revolution. No period of activity in constitutional matters can compare with this in the manner in which recognized propriety of procedure was forced to yield to expediency. In none, on the other hand, has appeared such a degree of self-control and conservatism as has stamped this as the one among all similar periods in which the people have gained complete control of constituent power. In spite of the circumstances amid which they were formed, the constitutions of the Revolution give abundant evidence of wise conservatism. Monarchy and anarchy were safely avoided, and in that was the chief success. With the exclusion of such elements assured, full play was given to the political instincts of both conservatives and radicals, and the result was the ultimate combination and definite expression of the political theories of their lead-

ers,<sup>1</sup> of the traditions and religious tendencies of the people, of the teachings of a century and a half of colonial administration, of the contemporaneous political philosophy of Europe, and of the lessons derived from the growth of the English constitution. The new written constitutions embodied and reflected the nature of the communities for which they were made.<sup>2</sup> In these documents the shifting of the source of political power was asserted, and the assertion was maintained. The maintenance of this made permanent the constituent work of the various commonwealths in the period under review; it has given significance and historical position to the decade which begins with the 'resumption' of the provincial charter of Massachusetts in 1775 and ends with the promulgation of New Hampshire's second constitution in 1784.<sup>3</sup> The year of independence saw the completion of eight constitutions<sup>4</sup> and the adoption of two royal charters

<sup>1</sup> E. g. John Adams to Mrs. Mercy Warren, July 11, 1807, *Collections of Massachusetts Historical Society*, 5 ser. IV, 324.

<sup>2</sup> Cf. *Oration of Jonathan W. Austin, at Boston, March 5, 1778*. Niles, *Principles and Acts*, 31.

<sup>3</sup> E. g. *Diary of Nathaniel Ames, December 30, 1777*: "Club began to read Locks essay on Govmt." *Dedham Hist. Reg.*, III, 186.

<sup>4</sup> The pamphlet, *Observations upon the Present Government of Pennsylvania*, by its citation of political writers, reflects the amount of familiarity with standard writers presumed in the citizen.

*Cf. Works of John Adams*, III., 22, 23.

<sup>2</sup> "The Scite and Circumstances in which your Affairs were brought in the year 1776: and your self-consciousness prompted you to find that you were not *in fact* what political establishments had made you *by law*, . . ." Pownall, *Memorial to Sovereigns of America*, 11.

"The next peculiarity to be found in these states is that we have established governments amongst us, approaching nearer to perfect democracies than any we have accounts of, either antient or modern; all power whatever is vested in, and immediately derived from, the people only; . . ." *Observations on Government, by a Farmer of New Jersey*, p. 50.

<sup>3</sup> A scant outline of the period is given in Bancroft, *History of the United States*, V., 111-125, 404-422.

<sup>4</sup> In Delaware, Maryland, New Hampshire, New Jersey, North Carolina, Pennsylvania, South Carolina, and Virginia.

as the basis of government;<sup>1</sup> the following year was marked by the adoption of three more constitutions;<sup>2</sup> in 1778 one of the constitutions of '76<sup>3</sup> was superseded by a more adequate form, and the period was rounded out by the adoption in 1784 and 1780, respectively, of the second constitution of New Hampshire and of the constitution of Massachusetts. The variety of procedure was great; the divergence of theories was marked; the results were by no means uniform. In the whole series no reorganization showed such distinct types and characteristic developments of procedure, such political ability and general conservatism,<sup>4</sup> such high ideals, such generally effective intelligence, such successful results, as the revolutionary transition from the old Province of the Massachusetts Bay to the new Commonwealth of Massachusetts.<sup>5</sup>

### § 2. *The Transition in Massachusetts*

The nature of the population of Massachusetts, its attitude toward the home government,<sup>6</sup> and the existence of the

<sup>1</sup> In Connecticut and Rhode Island.

<sup>2</sup> In Georgia, New York, and Vermont. John Adams was not wholly correct when he wrote to James Warren, February 3, 1777: "Thus I think there are but three States remaining which have not erected their governments, Massachusetts, New York, and New Hampshire." *Works of John Adams*, IX., 451.

<sup>3</sup> That of South Carolina.

<sup>4</sup> Cf. Action of Medfield, December 29, 1773: "while we profess ourselves advocates for Rational Constitutental Liberty we dont mean to patronise Libertinesm and Licenteousness we are sensible of the necessety of Goverment for the Security of Life Liberty and property and mean to vindicate and Submit to all Lawfull Constitutianal authority." *Revolutionary Corresp.*, Bancroft Collection, I., 607.

<sup>5</sup> And as to the conclusion of the movement, and the adoption of the constitution of 1780: "For the purposes of science, Massachusetts must, in this case, be regarded as the type of all independeut, civilized communities, to which it is designed to present a model of government adapted to secure the great ends of human society." *Works of John Adams*, IV., 217.

<sup>6</sup> Cf. Abington committee to Boston committee, April 27, 1773: "Our ever

township system early made that province appear both as an obstinate dependency and as a national leader. In each capacity she reaped her reward. The development of friction in administrative affairs made it possible for her to appear as of all the colonies the most oppressed, and gave occasion and strength to the growth among her people of a political school of the "movement" type, the wide prevalence of whose ideas transformed the alleged victim of the empire into the acknowledged leader of the nation. From her assembly hall went forth the call for the first Continental Congress; on her soil political opposition first became armed antagonism. The chief forces at work in the inceptive period of the Revolution were at the time well described in the saying that Massachusetts led the nation, that Boston directed Massachusetts, and that Sam Adams controlled the Boston town-meeting. So placed with reference to continental affairs, in local matters Massachusetts was equally adapted and committed to the program of the "movement" party. Her government passed out of royal hands before the Continental Congress had been in session a month; after a partially successful appeal for the advice of the Continental Congress hers was the first government to be placed on a new, although confessedly temporary, foundation; and from one of her leaders went forth to the other colonies one of the strongest single lines of influence toward the speedy erection of commonwealth governments. Massachusetts endorsed heartily, even if for the time incompletely, the

loyal Province of the Massachusetts-Bay has long stood the Butt of Ministerial Vengence, and a Number of our Sister Colonies, have not only had now and then a random Shot, but Some of them begin to feal the infernal Smart of the plaguy Sting, but to the praise of GOD be it Spoken American Vertue is not totally extinct, but far otherwise no Gentlemen it has lately buded, and is pleasantly blossoming and We ardently pray it's fruit may be brought to consumate maturity."

*Revolutionary Corresp.*, Bancroft Collection, I, 111.

principal features of John Adams' plan<sup>1</sup> of political campaign; and it was toward the full realization of his policy in the complete establishment of commonwealth government that the leaders aimed consistently during the few years of the distinctly transitional period.<sup>2</sup>

The time of reorganization in Massachusetts is marked by a variety of clear characteristics; it is, as well, divided into distinct periods. The underlying causes of the change appear in the strong difference in religious types<sup>3</sup> between the home country and its colony, in the wholly different social surroundings and influences,<sup>4</sup> in the increasing, if not even hostile, divergence of economic interests and activity, and in the almost antipodal political traditions<sup>5</sup> nourished and acted

<sup>1</sup> Cf. J. Adams to P. Henry: Philadelphia, June 3, 1776; *Works of John Adams*, IX., 387.

<sup>2</sup> Cf. *Collections of Mass. Historical Society*, 5 ser., IV. 349, 350.

<sup>3</sup> E. g. William Gordon's sermon before the Mass. Assembly, July 4, 1777: ". . . let us mould the governments of the respective states, . . . , so as not only to exclude kings, but tyranny, and, as ever, to retain the supreme authority in the people, together with the power, no less than the right of calling their delegated agents to account, whether they sit in the assembly, the council, the chair, or the Congress." *Patriot Preachers of the American Revolution*, 183, 184.

<sup>4</sup> In short, the only Difference between an *Old* and a *New-English* Man is in his *Religion*; . . . . Daniel Neal, *The History of New-England*, London, 1720, p. 614. Cf. Doyle, *The Puritan Colonies*, I., 14.

<sup>5</sup> The *Pennsylvania Evening Post*, vol. II., no. 179, March 14, 1776, has some significant material, and especially so as referring simply to the colonial city class: "Is not one half of the property in the city of Philadelphia owned by men who wear LEATHERN APRONS? Does not the other half belong to men whose fathers or grandfathers wore LEATHERN APRONS?"

<sup>6</sup> In 1853, Mr. Griswold of Erving, speaking of Massachusetts, said: "Her town-meetings alone could not have existed as they existed before the Revolution without leading to that important event." *Debates and Proceedings of the Convention of 1853*, 828.

"The proceedings of the Provincial Assemblies of *Plymouth*, in 1636, of *Maryland*, in 1650, of *Rhode-Island*, in 1663, of *New-York*, in 1691, and of *Massachusetts*, in 1692, may be referred to, as showing how deeply rooted and how widely diffused, even at these remote periods, were the true and essential principles which, subsequently expanding into maturity, produced the fruits of the American Revolution." 4 *American Archives*, I., preface, p. 2.

upon by the more advanced colonists on the one hand, and, on the other, by the more conservative Englishmen. In the discussion, furthermore, on the independence of the judiciary, in the contest for the control of the finances and the incidental control of the executive, in the various and protracted disputes between the legislative and executive branches of the government, in the parliamentary legislation on colonial trade and manufactures, and in the final interference with the guarantees of the provincial charter, are indicated some of the salient points in the long history of growing opposition, silent or avowed, between the home government and the colonists. The climax of expression is found, on the one hand, in certain acts of parliament of 1774, and, on the other hand, not only in the *coup d'état* of June 17, 1774, at the Salem court house, but also in such resolves as those of Suffolk county in the following September, and of the Continental Congress in June, 1775. The closing phases of this preliminary period are illustrated by the statutory alteration by parliament of the constitution of the Massachusetts council. The attempt to bring the colony into line on the basis of a largely centralized imperial system precedes but shortly the overthrow of the royal government. With that event, in October, 1774, the provincial times end, and the period of revolution begins. The constructive "abdication" of the royal executive is followed by the end of the royal assembly, and followed also by the organization of the so-called Provincial Congress.

The rule of the Provincial Congresses<sup>1</sup> extended from October, 1774, to July, 1775, and tided over with success the months when "civil government, legislation, judicial proceedings and commercial regulations were in Massachusetts, to all appearance, annihilated," and when the prevailing dis-

<sup>1</sup>The Proceedings are given in *Journals of Each Provincial Congress of Mass.*, Boston, 1838.

position of the people gave to the resolutions of the Provincial Congress all "the weight and efficacy of laws."<sup>1</sup> "And in every colony the votes of a congress . . . had equal effect with the laws of great and general courts."<sup>2</sup> The dangers of approaching anarchy threw into sharper prominence the conservatism and the self restraint of the people during these months; the general revulsion against the royal government was closely followed by an equally widespread and profound acquiescence in the administrative leadership of the Provincial Congress. No more striking instance of political vitality can be adduced than the unity, the propriety, and the vigor of the action of Massachusetts, of her politicians and of her people, during these few hazardous months. Then was strong justification given to the theory which George Cabot later<sup>3</sup> expressed in a letter to Theophilus Parsons: "All governments rest on opinion. Free governments, especially, depend on popular opinion for their existence, and on popular approbation for their force; if, therefore, just opinions and right sentiments do not prevail in the community, such systems must necessarily perish."<sup>4</sup> Such "right" sentiments, however, did prevail in Massachusetts and made possible the gradual and firm assumption by the Provincial Congress of powers of wide extent and important meaning. To be sure, the Congress did not suppose itself vested with sovereign powers, as did similar bodies elsewhere; but its voluntary recognition of the people as the ultimate source of political power was the only important limitation upon the competency of its action. On

<sup>1</sup> Ramsay, *History of the American Revolution*, Phila., 1789, I., 131.

<sup>2</sup> Langdon's Sermon before Mass. Assembly, May 31, 1775, *Patriot Preachers of the American Revolution*, 69. Cf. Ramsay, *History of the American Revolution*, I., 132.

<sup>3</sup> August 12, 1794.

<sup>4</sup> *Memoir of Theophilus Parsons*, by his son, Boston, 1861, p. 471.

this basis a large amount of legislative and administrative business was accomplished; attention was given to a wide range of affairs, from finances and the judiciary to manufactures and military supplies; with committees and single administrative officials a tolerably systematic organization was effected. The imperfections in organization were, furthermore, counterbalanced by the unusual character and indulgent temperament of the people. The activity of the Congress was timely and well-planned; the carriage of the body was characterized by unassuming dignity and by honest effort at propriety; and these characteristics were enhanced by its conservatism when, able almost to grasp a dictatorial power, it thrice effected willingly its own dissolution, and prepared thus for the further development of the government of the people.

The appeal of the second Provincial Congress drew from the Continental Congress the advice to "conform, as near as may be, to the spirit and substance of the charter" of 1691. The advice was promptly adopted. The third Provincial Congress caused the issue of writs of election for a new house of representatives, and in July, 1775, these representatives met, chose a council of twenty-eight to serve both as a second branch of the legislature and as an executive, and inaugurated thus a period of rule in accordance with the terms of the royal charter, modified in practice by an extra-constitutional provision for the exercise of the executive functions. "Thus, after living for more than twelve months without any legal government, without laws, and without any regular administration of justice, but what arose from the internal sense of moral obligation, . . . , the Massachusetts returned peaceably to the regular and necessary subordination of civil society."<sup>1</sup> There had been a legal government within a twelvemonth, and theoretically

<sup>1</sup> Warren, *History of the American Revolution*, Boston, 1805, I., 226, 227.

there still was one; but as the usurpation had been begun by the Provincial Congress, so now the work was taken up by a provisional government of better organization, resting on a surer basis, and the existence of which could be more easily justified.

The use of the provincial charter as a basis of government marks a distinct division in the transitional period, and covers the time from July 19, 1775, to October 25, 1780. The assembly which met in accordance with that charter succeeded a confessedly revolutionary body; this later assembly was itself succeeded by a body created by a written form of government to which success in war had already given the pledge of future legitimacy; and the constitutional character of this last organization was established as one of the incidents of a finally successful revolution. During this half decade, as already indicated, the forms of government and of procedure corresponded with those of the provincial period; but it was for a provincial period that the document was prepared; it was not formed by royalty to serve a democratic commonwealth, and such service would be both incongruous and inconvenient. This period, thus, became marked by the first constituent proceedings in Massachusetts, by the first instance in any of the commonwealths of the submission to popular action of a new constitution, and, further, by the rejection on the part of the people, acting in their town-meetings, of this constitution of 1778. The movement for a new constitution, with new method of procedure, resulted successfully in the ratification by the people of the constitution of 1780. With the inauguration of John Hancock as governor, on October 25, 1780, the last period of the transition closed and the history of the new commonwealth began.

## CHAPTER II

### ELEMENTS OF ANTAGONISM IN THE PROVINCIAL SYSTEM

A STUDY of English colonial administration reveals the distinction obtaining between a royal province and a dependency in which the development of a chartered corporation into a "corporate colony"<sup>1</sup> tended seriously to limit the royal power. Such a theoretical distinction became a practical antagonism when finally in Massachusetts the effort was made to maintain a government containing elements of both systems. The effort occasioned many events and expressions which made it plain that harmony between the provincial and commonwealth principles was impossible, and which foreboded in no uncertain way the time when the anomalous conditions should be removed, even if by acts so radical as to constitute a revolution.

The forms and powers of government in provincial Massachusetts were plainly lacking in consistency;<sup>2</sup> in connection with them, as well, arose contests for which at the first there appeared no possible occasion. Among these latter was the dispute over the rights of town representation,

<sup>1</sup> See Osgood, *The Colonial Corporation*.

<sup>2</sup> Cf. "Reasons for a Declaration of the Independence of the American Colonies." The first is: "The Colonies will be delivered from two Governments directly opposed to each other." 4 *American Archives*, V., 992. Cf. Instructions of Lexington to representative, December 31, 1772: "But this is not all—Our Charter knows no such thing as Instructions to Governors; and yet, what have not Instructions done to distress this People!" *Revolutionary Corresp.*, Bancroft Collection, I., 497.

a dispute which well illustrates one phase of the inconsistency and defines clearly the antagonism of the parties involved. The town system had been formed in the early colonial period; by the charter of 1691, its existence was presumed and its continuance assured, and thereafter new towns were frequently incorporated by act of the General Court. Such incorporation by the division of older towns, or by the erection of distinct towns on newly settled territory, was naturally made necessary by the increase of population or by its dispersion. It had long been in accordance with the recognized theory, and it had, as well, been the customary practice of the legislature, to consider the right of representation in the General Court as an incident of town incorporation. Such a theory had met with no serious opposition until three bills, for dividing as many townships, were, in 1742, presented to Governor Shirley. His action on this occasion created a new problem in colonial politics. Far from immediately assenting to the bills, the governor transmitted them to the Lords of Trade with suggestive comment. The fact that these bills would, at a stroke, double the legislative representation of a given area, prompted him to investigate the practice since 1692, and he found that since that time thirty-three new towns had been erected by such means, and that the practice of thus forming two or even three towns out of a single town had increased greatly in the later years, sixteen of the thirty-three bills having been passed in Governor Belcher's administration. Shirley further based his opposition to the bills on the fact that the erection of new precincts and parishes would secure equally well all administrative advantages which the town system might accord. He more pointedly referred to the embarrassment of the past, and to the feasibility of checking the division of towns, in which connection he bluntly proposed "to put an end to this way of increasing the number of Representatives,

which seems to promise no good effect for his Majesty's service . . .".<sup>1</sup>

The position taken by Shirley was upheld by the Lords of Trade in a report of June 8, 1743, and was further endorsed by an order in council of August 11, 1743, which approved the draught of an additional instruction to Governor Shirley. By this the new position of the administration was stated. Reference was made to the possible inconvenience of an increase in the number of towns by division, as well as to the possibility that all essential political functions might be performed fully as well if the population should be organized into precincts, parishes, or villages, without rights of representation. The effective portion is seen in the direction that the governor should assent to no bill erecting a new town or dividing an old one, unless the bill should contain a clause suspending the execution thereof until the king's pleasure should be known.<sup>2</sup>

The policy thus defined was not the policy of a year or of a ministry, but was a factor in the political development of Massachusetts from the time of its announcement to the time of the Revolution. Thus, in 1756, the Lords of Trade enjoined upon Governor Shirley more care in the observance of the additional instruction;<sup>3</sup> and the first act of the session of the following year was disallowed by the privy council, as the

<sup>1</sup> *Acts and Resolves of the Province of Mass. Bay*, III., 70, 71. Gov. Shirley to Lords of Trade, October 18, 1742. In this report he says there were at the time 160 towns, of which most were entitled to two representatives, although none but Boston, Salem, Ipswich, and Newbury ever sent more than one; "and very few or none of the new Towns ever send any;" but if friction should arise on any point the number in the house could be almost trebled.

<sup>2</sup> *Acts and Resolves of the Province of Mass. Bay*, III., 72.

<sup>3</sup> Acts of 1753-'54, chaps. 35, 37, 38, erecting respectively the towns of Lincoln, Greenwich, and Petersham, granted full power of representation, and did not contain the suspending clause; Shirley's attention was called to this in the letter of the Lords of Trade of April 13, 1756, but the acts were not repealed, owing to the inconvenience that might be occasioned. *Ibid.*, III., 745.

instruction of 1743, had been repeated to Governor Pownall.<sup>1</sup> It was when this bill had passed both houses that Thomas Hutchinson, in the council, asked to enter his dissent, assigning as one of his reasons therefor the fact that an increased number of representatives "must likewise give that House an undue proportion to the Board in the Legislature where many affairs are determined by a joint Ballot of the two Houses."<sup>2</sup> The report of the Lords of Trade on the same bill affirmed that the act was for the sole purpose of giving the town a representation in the assembly, and that the practice had "formerly by its frequency been found to produce many inconveniences and particularly that of continually increasing the number of Representatives, . . ."<sup>3</sup>

A brief lapse in the force of earlier instructions was occasioned by the death of the sovereign, of which period the Lords of Trade wrote that in their opinion acts for creating townships which had no reference to the right of choosing representatives were most nearly in accordance with the act of 1692.<sup>4</sup> The view of the situation, from one side, was now given by Governor Bernard when he wrote: "It is also obvious that the new Settled Counties have a right to be represented. But yet there is such danger to be apprehended from the house of Representatives continually increasing that it is time to put a stop to it by some means, tho' it were to be wished that it could be done without denying new Settlers the natural and constitutional right of being represented. The increase of the number of Representatives

<sup>1</sup> Acts 1757-'58, chap. 1, erecting the town of Danvers with full powers, was disallowed by the Privy Council, August 10, 1759. *Ibid.*, IV., 5; *Cf. Ibid.*, IV., 93, 94. Yet Danvers after 1758 was recognized in the house; *Cf. Acts of 1772-'73*, chap. 17; *Cf. Ibid.*, V., 268.

<sup>2</sup> *Ibid.*, IV., 93.

<sup>3</sup> *Ibid.*, IV., 5.

<sup>4</sup> To Gov. Bernard, November 25, 1761. *Ibid.*, IV., 452. Silence as to representation would imply the right to such; where rights of representation were withheld an explicit reservation was made.

seems to endanger the Constitution itself. . . . In the year 1718, there were but 91 Writs issued,<sup>1</sup> in 1692, when the Charter was opened probably not above 84, Now there is near 170 And yet the Council keeps its old Number of 28, So that the Assembly were to the Council at the time of their first meeting as 3 to 1 now they are 6 to 1 and consequently the Councils share in elections is diminished by half."<sup>2</sup> The right of the colonial position was virtually conceded by the Lords of Trade in the next year, though they also replied to Bernard and warmly agreed with his opinion that the increase of the number of representatives without a corresponding addition to the power of the council would certainly "have very pernicious consequences and destroy that Balance which we presume was originally intended to be kept up between the Upper and Lower House of Assembly."<sup>3</sup>

In the later years some of the towns incorporated upon newly settled lands beyond the limits of the earlier towns received the right of separate representation; and in this connection Lieutenant Governor Hutchinson, referring to the acts of the last session, wrote in 1771, that they seemed not to require remark or explanation, except a possible apology for "consenting to so many New Towns without excepting a Privilege of sending Representatives. They are all made out of new Territory which never was before incorporated and my consent is warranted by the practice of my Predecessor in consequence of directions he received.<sup>4</sup> As

<sup>1</sup> Neal, *History of New England*, 1720, speaks of the house as having 103 members, p. 605; and in the appendix gives a list of council and house, naming 98 of the latter with five vacancies. *Ibid.*, 710-712.

<sup>2</sup> To Lords of Trade, August 3, 1761. *Acts and Resolves of the Province of Mass. Bay*, IV., 451.

<sup>3</sup> To Gov. Bernard, June 11, 1762. *Ibid.*, IV., 452. Cf. *Ibid.*, IV., 451, 453.

<sup>4</sup> Thus we find towns incorporated, especially in the border counties, with full rights of representation. E. g.: Gageborough, Berkshire Co., Acts of 1771-'72, chap. 6; Partridgefield, Berkshire Co., Acts of 1771-'72, chap. 7; Buxton, York

there is a prospect of many such Townships being incorporated every year the House of Representatives will soon swell to an enormous size."<sup>1</sup> That the restrictive policy, however, was retained to the end, even if not in all instances applied, is shown by the course of Hutchinson when, as governor, he assented to an act<sup>2</sup> erecting out of the territory of Springfield the town of West Springfield with no limitation as to representation, an assent which in April, 1774, he explained thus: "I must acknowledge I gave my assent suddenly and upon further consideration should have refused it. Seeing the increase of weight will in some degree follow the increase of numbers in the House of Representatives, it requires some provision to prevent such increase of numbers."<sup>3</sup>

The policy thus was repeatedly expressed; its application was as frequently enforced, and with such uniformity that the situation developed what was for the colonist a question of vital importance. The right of town representation was a right sacred in colonial tradition; its limitation now upon grounds of political policy would subject colonial theories to a revision, and would lead directly to a more or less complete disappearance of local participation in provincial politics. The complete political subordination of the provincial population to a distant administration would result from the success of the ministerial purpose; and the blunt

Co., Acts of 1772-'73, chap. 10; Loudon, Berkshire Co., Acts of 1772-'73, chap. 37; Hallowell, Lincoln Co., Acts of 1770-'71, chap. 27; Winthrop, Lincoln Co., Acts of 1770-'71, chap. 30; Vassalborough, Lincoln Co., Acts of 1770-'71, chap. 33; Belfast, Lincoln Co., Acts of 1773-'74, chap. 3; Waldoborough, Lincoln Co., Acts of 1773-'74, chap. 4; Edgcomb, Lincoln Co., Acts of 1773-'74, chap. 21; New Gloucester, Cumberland Co., Acts of 1773-'74, chap. 22; Pownalborough, on the Kennebec, Acts of 1759-'60, chap. 23; on this last case *cf.* *Acts and Resolves of the Province of Mass. Bay*, IV., 350, 351.

<sup>1</sup> To Secretary Pownall, May 16, 1771. *Ibid.*, V., 139.

<sup>2</sup> Acts of 1773-'74, chap. 26.

<sup>3</sup> To Lords of Trade, April 5, 1774. *Ibid.*, V., 380.

expression of the reasons of that purpose did not tend to improve the attitude taken by the colonists. Their contest was now one for essential rights, as well as for the maintenance of theory. That their grievance was not light is apparent from the wide extent to which was experienced this denial of an important political function.<sup>1</sup> The spirit of the home government was shown, and by it the temper of the people was being prepared for the future. They were now taught that their interests were not the interests of their governors, and that for the maintenance of their political rights they must depend on themselves alone. The theories upheld on the two sides of the water now brought factors in the same government, which were normally interdependent, into a relation of antagonism.<sup>2</sup> For the present, to be sure, the

<sup>1</sup> Thus we find the erection of districts with full town rights except that of representation; *e.g.*: Palmer, Acts of 1751-'52, chap. 15; Shirley, Acts of 1752-'53, chap. 9; Southampton, Acts of 1752-'53, chap. 10; Greenfield, Acts of 1753-'54, chap. 3; Newcastle, Acts of 1753-'54, chap. 4; Granville, Acts of 1753-'54, chap. 21; *Cf.* Acts of 1752-'53, chaps. 23, 24, 25, 26; Acts of 1753-'54, chaps. 2, 22, 36; Acts of 1754-'55, chap. 14; Acts of 1758-'59, chap. 12; Acts of 1759-'60, chaps. 3, 5, 6, 7, 22, 39.

Likewise towns were erected with all powers except that of representation; *e.g.*: Colrain, Acts of 1761-'62, chap. 10; Whately, Acts of 1770-'71, chap. 22. In the last case it was provided that the town should join with Hatfield, out of which it was erected, in the choice of representatives. So when the north parish of Sheffield was made the town of Great Barrington, it was provided that the new town should join with the older in choosing a representative; Acts of 1761-'62, chap. 9. So when the district of Alford was incorporated it was provided that it should join Great Barrington, Sheffield, and Egremont in the choice of a representative; Acts of 1772-'73, chap. 36; *Cf.* Acts of 1773-'74, chap. 27.

When the town of Pittsfield was erected, April 21, 1761, it was provided that it should not elect a representative until the general election of May, 1763; Acts of 1760-'61, chap. 34.

<sup>2</sup> It may be held that the antagonism was one of theory; in actual exercise of this right the colonists had not been forward, as is shown repeatedly by a comparison between the number of the house and the number which it might legally have contained. In many quarters self-interest made impossible any strong demand for the complete retention of what by some had been deemed a burden. The act of 1751-'52, chap. 15, erects the district of Palmer, and grants full town

antagonism was not violent; the loss of representation meant for each town a lower tax rate, and that could well repay the waiving of certain intangible rights.<sup>1</sup> When, however, men came to the turn of affairs at which a theory or a principle was maintained for itself alone, the attitude of the colonists was more positive. The significance of the earlier course was plain, and the knowledge of its meaning could not fail to make more pronounced the views of the revolutionists. Among those few acts passed on the 17 June, 1774, was one for the erection of the town of Hutchinson without any restriction as to its rights of representation, and the act,<sup>2</sup> although passed under a royal governor, was indicative of the tendency of the time and of the course which later action on the subject was to take. One of the first acts passed by the General Court in 1775, after the resumption of the charter, was that which removed all conditions imposed in the earlier incorporation of towns, and which, furthermore, granted to all incorporated districts both the status of towns

rights except that of representation, "which, it is represented, said inhabitants are not at present desirous of." *Acts and Resolves of the Province of Mass. Bay*, III., 599. Near the close of the session of 1760-'61, four bills were sent to the governor erecting the towns of Colrain, Tyringham, Sandisfield, and Becket; the towns had been willing to waive the right of representation but the house refused to allow them to waive the point; the bills accordingly were rejected. Pittsfield was incorporated by a bill passed by the same assembly, but the approval of the bill was based on the fact that Pittsfield was a county town and on new territory. *Acts and Resolves of the Province of Mass. Bay*, IV., 451.

<sup>1</sup> Cf. Inhabitants of Pearson Town, to Boston Committee of Correspondence, July 8, 1773: "We are not a Town. To be at present in that capacity would expose us to a Taxation which would be a Burden too Grievous for us in our Infant State to bear." *Revolutionary Corresp.*, Bancroft Collection, I., 705.

Wenham sent a representative only once in the years from 1747 to 1767. Allen, *History of Wenham*, 54. Manchester, May 10, 1736, voted not to send a representative, "not being able to support the Charges. . . ." *Manchester Records*, II., 23. Cf. *Ibid.*, II., 83, 171; Adams, *Address at Acton*, 14; Gibbs, *History of Blandford*, 72; *Brantree Town Records*, 333.

<sup>2</sup> Acts of 1774, chap. 3, *Acts and Resolves of the Province of Mass.*, V., 389.

and full rights of representation.<sup>1</sup> Not only such acts during the period of the revolution, but also various facts in the subsequent history of the commonwealth, emphasized the importance of the towns in the political system of Massachusetts, and made still more distinct the significance of a contest involving the maintenance or the restriction of their rights. Such significance is undiminished by the fact that this question did not become an issue at any threatening crisis, and that its solution was not attended by any theatrical incidents.

The location of the assembled General Court furnished a further subject of controversy which aided in increasing the tension. Little was said either in the charter of 1691, or in the explanatory charter of 1726, regarding the place at which the legislature should meet; yet established custom, provincial statute, and general recognition had designated Boston as the legislative seat. The question at issue illustrates how not infrequently a political character is given to an event or policy which in its origin was confessedly not of that nature. The vigorous political contest, in the years preceding the Revolution, over the removal of the assembly to Cambridge, was not an isolated phenomenon. The question, in one form or another, had been present for half a century; and during that period the attitude assumed on it had varied significantly. Recurring to 1721,<sup>2</sup> the prevalence of small pox in Boston then forced the legislature, for its session of August 23, to meet at the George Tavern on Boston Neck, a place which the representatives voted "not accomodable."<sup>3</sup> They resolved to remove to Cambridge, to meet there when the governor should see fit; with this step the council concurred, but the governor considered such procedure an infringement

<sup>1</sup> *Acts of 1775-1776*, chap. 3. *Ibid.*, V., 419, 420.

<sup>2</sup> Cf. Hutchinson, *History of Massachusetts*, II., 227, 241, 245.

<sup>3</sup> *Acts and Resolves of the Province of Mass. Bay*, II., 234.

of the charter. Nevertheless, the General Court met subsequently at Harvard College; but the approach of the epidemic forced them to adjourn, in the following month, to the Swan Tavern, Cambridge. Likewise for hygienic reasons we find the General Court meeting at Harvard College, at the East Meeting House, Roxbury, and at the George Tavern, during the year 1730.<sup>1</sup> So in 1737, for the sake of convenience, the legislature met at Salisbury;<sup>2</sup> and in 1751 and 1752, owing to epidemics, at Harvard College again.<sup>3</sup>

Of another type was the adjournment of the General Court to Salem in 1728.<sup>4</sup> On September 13 of that year Governor Burnet, at Boston, wrote to the Lords of Trade: "I came hither on the 19th July and have ever since the 24th been contending with a stiff assembly." So obstinate was the conduct of the house in refusing to obey the king's instructions with reference to the governor's salary, that that officer adjourned the assembly to meet at Salem, October 31.<sup>5</sup> Such sessions as those of 1728 and 1729, held in any place outside of Boston, the representatives resolved were illegal. They had in 1721, passed similar resolves, and at that time not only had the council concurred but the governor as well had admitted the correctness of their position.<sup>6</sup> The lower house held the same ground in 1770, when it opposed the course of the governor in adjourning the assembly to Cambridge. There was then no reason for or against re-

<sup>1</sup> *Acts and Resolves of the Province of Mass. Bay*, II., 573, 574. Cf. *Ibid.*, II., 545, for meeting at Cambridge, Aug. 21, 1729.

<sup>2</sup> *Ibid.*, II., 923. Cf. Palfrey, *History of New England*, IV., 556.

<sup>3</sup> *Acts and Resolves of the Province of Mass. Bay*, III., 605, 662.

<sup>4</sup> Cf. Hutchinson, *History of Massachusetts*, II., 316, 317, 325, 328. Cf. *Ibid.*, II., 335. Cf. Palfrey, *History of New England*, IV., 513, 524, 526.

<sup>5</sup> *Acts and Resolves of the Province of Mass. Bay*, II., 523, where the reasons for the step are given.

<sup>6</sup> *Ibid.*, I., 363. Cf. Hutchinson, *History of Massachusetts*, II., 317, 318.

moval on which all parties were agreed; the purpose involved in the act was political, and so was the problem which resulted from it. Efforts at its solution now for three years intensified and embittered the colonial spirit.

The violence suffered by royal officials in Massachusetts in the time of the Stamp Act excitement, the participation of the royal legislature in the movement toward the Stamp Act Congress, and such subsequent acts of the house of representatives, as its refusal to rescind its circular letter to the other colonies, gave Massachusetts an unsavory reputation with the home government. The sequence of events was so logical and so speedy that the introduction of an effective military force need not have surprised the colonists. Amid their crude effort, in September, 1768, to create such a provincial congress as was later a power, on the very day when the delegates of nearly one hundred towns dispersed after the conference at Faneuil Hall, the fourteenth and twenty-ninth regiments arrived in Boston harbor. Thenceforth Boston contained a camp, and in consequence the hostile feeling toward the ministry was greatly increased. "Vindex," voicing the common man, demanded that the proper magistrates should "execute the good and wholesome laws of the land with resolution and an intrepid firmness, aided by the *posse comitatus*, the body of the county, which is their only natural and legal strength," and insisted that "to be called to account by a common soldier, or any soldier, is a badge of slavery which none but a slave will wear."<sup>1</sup>

More formal protest by the General Court was impossible during the period of prorogation. The situation, however, remained practically unchanged until the new house of representatives met, at the end of May, 1769. Immediately it

<sup>1</sup> *Boston Gazette*, December 5, 1768, Wells, *Life of Samuel Adams*, I., 231, 232.

adopted a message to Governor Bernard in which it protested "that an armament by sea and land, investing this metropolis, and a military guard, with cannon pointed at the very door of the state house, where this Assembly is held, is inconsistent with that dignity, as well as that freedom, with which we have a right to deliberate, consult and determine."<sup>1</sup> They passed further resolves declaring such treatment a "breach of privilege," and that it was only out of regard for the provision of the charter requiring the council, speaker, and clerk to be chosen on this last Wednesday in May, that they would consent to transact any business whatever. They expressly stated that they bore their part in the election of the day "from necessity, and in strict conformity to the royal charter;"<sup>2</sup> having before claimed their constitutional freedom, and now protesting that their thus proceeding, while the above mentioned forces are suffered to remain in the metropolis where this Court is convened, is to be considered as a precedent in any time hereafter, or construed as a voluntary receding of this House from their constitutional claim."<sup>3</sup> The governor's disavowal of authority over the military force was followed by an interchange of views and an obstruction of business, until, on June 15, Bernard came to the conclusion, as he informed the house, "from your resolutions, and a fortnight's experience, that you do not think that this is, at this time, a proper town for the General Court to sit in,"<sup>4</sup> and he accordingly endeavored to apply such remedy as lay within his power. Because he claimed to be unable to withdraw the royal forces from the capital, he removed the General Court to Cambridge. The next address of the house was mainly an insistence upon the

<sup>1</sup> *Speeches of the Governors of Massachusetts*, 166, 167.

<sup>2</sup> Precedents for argument in such a contest were few. Cf. *Parliamentary History*, IV., 317; Smith, *History of New Jersey*, 405-409.

<sup>3</sup> *Speeches of the Governors of Massachusetts*, 168.

<sup>4</sup> *Ibid.*, 172.

principles already advanced. In it they claimed the endorsement of their constituents, "for an entire fortnight, spent in silence, or a much longer time, cannot be displeasing to them, when business could not be entered upon, but at the expense of *their* rights and liberties, and the privilege of this House."<sup>1</sup> Other questions now took precedence, a petition for the removal of Bernard was adopted, and with his departure, Lieutenant Governor Thomas Hutchinson took the laboring oar for the administration.

After delays by prorogation the General Court finally met again, March 15, 1770. Instructions received by Lieutenant Governor Hutchinson were by him interpreted as requiring a session at Cambridge. The house at once declared that such a step, if based merely on royal instructions, could be nothing less than "an infraction of our essential rights, as men and citizens, as well as those derived to us by the British constitution, and the charter of this colony."<sup>2</sup> They took a step equally characteristic of their views, when they continued their remonstrance by the appeal to the governor to exert the authority derived by him from his Majesty's royal commission, agreeable to the charter of the colony, and vested in him alone, "in adjourning this great and General Assembly, to its ancient place, the Court House in Boston."<sup>3</sup> The council took similar ground, though its statement of the case was more moderate in tone and less inclusive. In his replies to the two houses, the governor disclaimed all private motives, and emphasized his position as "servant of the King, to be governed by what appears to me to be his Majesty's pleasure in those things, which otherwise I might have a right to do, or not to do, according to my discretion."<sup>4</sup>

Besides the constitutionality and force of royal instruc-

<sup>1</sup> *Speeches of the Governors of Massachusetts*, 173.

<sup>2</sup> *Ibid.*, 195.

<sup>3</sup> *Ibid.*, 196.

<sup>4</sup> *Ibid.*, 198.

tions which were inherent in the nature of provincial government, and besides the elements of the problem involving convenience and expediency, the colonists adduced the provisions of the provincial statute, 10 William III., chap. 4, and insisted upon the illegality of holding a General Court outside of Boston. In this statute, the processes for convening a General Court had been stated and the form of writ of election prescribed. In this it was provided that the General Court should meet in Boston,<sup>1</sup> a provision held by one party to be specific and mandatory and by the other party to be wholly *pro forma*. Relying chiefly upon this, the representatives declared that they "proceed to business, under this grievance, *only from absolute necessity*;" and they ordered that their protest be recorded in order that their act might not thereafter be taken as a precedent.<sup>2</sup>

When the new house of representatives assembled, May 31, 1770, they at once addressed the governor on the all-important question. The adjournment to Salem, by Governor Burnet, in 1729, was cited and attention drawn to the fact that the representatives had never yielded their point. Mention was also made of the enforced adjournments, and especially of that of 1721, after which "the three branches

<sup>1</sup> Cf. Acts of 1692-'93, ch. 36; Acts of 1694-'95, ch. 28; Acts of 1698, ch. 4; *Acts and Resolves of the Province of Mass.*, I., 80, 202, 315.

<sup>2</sup> March 24, 1770; *Speeches of the Governors of Massachusetts*, 202.

Joseph Hawley, Cambridge, April 3, 1770, to Mrs. Hawley: "You will Perceive by the Papers that the Council and house are very uneasy at the Court's being held at Cambridge. It was Sometime before they would Consent to enter on business, but on Saturday the 24th of March after Protesting against the Abuse and grievance of the Court's being Moved from the Seat of Governmt they applied themselves closely to business, of which there is Much to do, but We daily find ourselves retarded in business by reason of our distance from the Province records and for want of Convenient places for Comtees to Sit in &c. . . . The Lt Govr treats the house with great Complaisance, as I expected he would." *Hawley Papers*, I., Bancroft Collection.

of the Legislature passed a resolve, to make valid their proceedings; which they would not have done, if they had thought the adjournment from the Town House, in Boston, however necessary, had been consistent with the before mentioned legal establishment."<sup>1</sup> The absence of the lieutenant governor prevented immediate reply. Under these circumstances the house issued a further defense of its action on the ground of necessity, and reaffirmed its adherence to the charter by proceeding at once to the election of councillors. On the following day Hutchinson addressed the General Court, and also sent a message to the house. In this he insisted not only upon the grant by the charter to the governor of power to adjourn and prorogue the General Court, but also upon the unlimited nature of that power, regardless of custom or of the form of the writ as established by provincial law. He alluded to the adjournment to Salisbury in 1737, by royal writ, when no necessity existed; and he made reference as well to the disputes upon this matter in the days of Shute and Burnet, in the time of the latter of whom, he concludes, "the dispute, as I apprehend, was settled; and I cannot help being of opinion, that you are moving a matter which has been more than forty years at rest; . . ."<sup>2</sup>

The interchange of protest and reason continued, and early in June the house accepted a long report on the matter which was made effective by the adoption, on June 7, of a further message to the lieutenant governor. In this they considered it "by no means expedient to proceed to business, while the General Assembly" was "thus constrained to hold their session out of the town of Boston."<sup>3</sup> In view

<sup>1</sup> May 31, 1770; *Speeches of the Governors of Massachusetts*, 207.

<sup>2</sup> *Ibid.*, 210.

<sup>3</sup> Cf. Eliot to Hollis, June 28, 1770. *Collections of Mass. Hist. Soc.*, 4 series, IV., 452.

of the very important business awaiting their attention, they prayed the governor to remove the General Court "to its ancient, usual, and only convenient seat, the Town House, in Boston."<sup>1</sup> The intrinsic significance of this action was increased by the fact that in it the house was practically a unit, the vote for the adoption of the message being 96 to 6.<sup>2</sup> Hutchinson immediately repeated from his point of view the arguments in the case and assured the house that if they should finally refuse to do business in Cambridge, which he hoped they would not, all the ill consequences would be attributed to them, and not to himself.<sup>3</sup> The house then promptly adopted still more elaborate justifications of its course; the council co-operated in this; and thereupon followed for months an incessant reiteration of arguments and claims varying widely in justification and in convincing power.<sup>4</sup>

After two more years of such contention an end was finally reached. In the customary message of the house on the subject, in May, 1772, was an expression not easily interpreted with confidence by the governor. His request for an explanation provoked a display of ill temper, and an episode that became somewhat significant. To his request the house replied that all the expressions of the house were "sufficiently clear and plain," and that, therefore, it was altogether needless to

<sup>1</sup> *Speeches of the Governors of Massachusetts*, 215.

<sup>2</sup> *Ibid.* The minority is given in Hutchinson, *History of Massachusetts*, III., 292, as Timothy Ruggles, Daniel Oliver, John Worthington, Benjamin Day, Elisha Porter, and John Ingersoll.

<sup>3</sup> *Speeches of the Governors of Massachusetts*, 217.

<sup>4</sup> By a resolution of June 13, 1770, the house ordered to be published a pamphlet of 83 pages called: "*Proceedings of the Council, and the House of Representatives . . . relative to . . . holding . . . The General Assembly . . . in Cambridge; . . .*" Also by order of the house there was printed a pamphlet of 66 pages entitled: "*A Continuation of the Proceedings of the House of Representatives, . . . relative to . . . holding The General Assembly at Harvard College, in Cambridge . . .*" Both were printed by Edes and Gill in 1770.

make any explanation of them; to which was added the hope that his excellency would not delay to give a full answer to the message.<sup>1</sup> To this he replied, "I must govern myself by the measure, not of your understanding, but my own. . . . As reserved as you have been in your message to me, I will be unreserved and open with you."<sup>2</sup> Much more pungently he continues: "Whilst you dispute the authority by which I removed the Court from Boston, I do not intend to carry it thither again; . . ."<sup>3</sup> "This sudden step," as Hutchinson himself later wrote, "gave the governor much uneasiness." After some ten days, in order to prevent dissatisfaction among the people of the province, he laid his instructions and the message of the house before the council, and required its opinion and advice, whether "he might remove the assembly to Boston, consistently with his instructions? They were unanimously of opinion that he might; and he caused the assembly to be adjourned to Boston accordingly."<sup>4</sup> Thus was ended the contest and was afforded, in the words of the chief participant, an opportunity "to hope for a session without controversy."<sup>5</sup> A concession prompted by expediency could not, however, assure such result. On the contrary, the circumstances and the nature both of the con-

<sup>1</sup> June 3, 1772; *Speeches of the Governors of Massachusetts*, 323.

<sup>2</sup> June 3, 1772; *Ibid.*, 323.

June 8, 1772, Joseph Hawley, Boston, wrote to Mrs. Mercy Hawley: "I am this minute Setting off for Cambridge. I think our Governour is bereft. You'll See by the Papers how he acts." *Hawley Papers*, I., Bancroft Collection. May 9, 1772, Hutchinson wrote to [Israel Williams]: "Govt has but few supporters and they will not attend when they are most wanted." *Letters of T. Hutchinson to Israel Williams*, 53, Bancroft Collection. Cf. *Ibid.*, 57.

June 22, 1772, Hutchinson wrote to T. Pownal: "If you was now in America you would be sick of it in a week and leave it. Ten years ago they had some notion of government. They have none now." *Mass. Archives*, 27, 346; reprinted in Hosmer, *Life of Hutchinson*, 231.

<sup>3</sup> *Speeches of the Governors of Mass.*, 323.

<sup>4</sup> Hutchinson, *History of Massachusetts*, III., 356, 357.

<sup>5</sup> *Ibid.*, 357.

test and of its apparent ending were such as to impress upon the colonists the imminent danger of being governed wholly by executive instructions from a distant power.<sup>1</sup> The possibility of being brought ultimately to such administrative subordination had been present from the beginning of the provincial period; it was now by no means removed; and it remained before the colonists as a certain incident of defeat both during the two years that were still to precede the final contest, and during the progress of that contest as well.<sup>2</sup>

In the time of Hutchinson also appeared a further question, which was not new, but which was of fundamental importance.<sup>3</sup> For decades the legislative control exercised over the governor by limiting or withholding grants of his salary had been repugnant to royalty. The requisition that the salary of the king's governor should be granted for an indeterminate or a relatively long period had been repeatedly and successfully resisted; and original practice had been followed by voting annually the salary of the governor

<sup>1</sup> Cf. T. Hutchinson to John H. Hutchinson, February 14, 1772. Writing of Pitt's speech on American affairs, he says: "Since that time the members of the Assembly grumble and mutter, and ask by what authority Acts of Parliament are mixed with our Provincial laws; and the House of Representatives have repeatedly resolved that it is unconstitutional for the people to be governed by laws made by any power in which they are not represented." *Mass. Archives*, 27, 296; Almon, *Remembrancer*, 1777, 110, 111; reprinted in Hosmer, *Life of Thomas Hutchinson*, 229. Cf. Abington committee to Boston committee, July 29, 1773; referring to Hutchinson, Oliver, Hallowell, and others: "If they are above Law they ought not to be allow'd to live among any humane Society." *Revolutionary Corresp.*, I., 115, Bancroft Collection.

<sup>2</sup> Since the text was prepared the following, by a well known student of the period, has appeared: "Since the House flatly refused to proceed to business in any other place than the town-house in Boston, Hutchinson at last yielded. For four years the struggle had been maintained, much of the time almost solely by Samuel Adams. The insistence upon the point produced a profound effect upon public opinion, though in history its importance has not been appreciated." Hosmer, *Life of Hutchinson*, 227.

<sup>3</sup> Cf. e. g.: Palfrey, *History of New England*, IV., 456, 498-503, 507, 512, 539.

with the other items of the provincial civil list. It was natural that the home government should aim to remove its appointees from dependence upon the representatives of democracy. This, apparently, could be accomplished with ease by arranging that the governor should draw his salary, not from the provincial treasury, but from funds controlled by the home government. The effort to bring about this change set in a clear light the anomalous position of the governor; it made plain the divergence of those interests which the governor was supposed, respectively, to serve and to represent; and it added to the broader controversy a further difficulty.

Such difficulty finally appeared when, late in 1770, a bill was passed by the General Court, appropriating £325 to Hutchinson for his support as lieutenant governor. To this Hutchinson did not give his assent; and his action in the following April<sup>1</sup> upon two similar appropriations was so long delayed that the house took the offensive. On the day after acknowledgment was made of the announcement "in form" of Hutchinson's receipt of his commission, the house addressed the governor with reference to his action upon the bill already mentioned and his failure to act upon two later bills. The members stated to him plainly that they were apprehensive that he was "under some restraint;" and that they could not account for it upon any other principle than his having provision for his "support in some new and unprecedented manner."<sup>2</sup> They asked for some assurance to

<sup>1</sup> April 1, 1771, Hutchinson wrote to Israel Williams: "Two Adams', Phillips, Hancock and two or three others who with the least reason have been the most injurious are all of any sort of consideration who stand out. I cannot expect any great mark of regard from the House whilst the Boston Members are aided by a gentleman from your County who has so much influence." *Letters of T. Hutchinson to Israel Williams*, 49-51, Bancroft Collection.

<sup>2</sup> Cf. *Ibid.* to *Ibid.*, Dec. 7, 1766; as to Joseph Hawley: "I have not the least doubt of his integrity . . . ." *Ibid.*, 11.

<sup>2</sup> *Speeches of the Governors*, 298.

allay their apprehensions, and for a definite statement whether provision was made for his support, "as Governor of this province, independent of his Majesty's Commons in it."<sup>1</sup> In response, he alluded to the use of this new title for the house of representatives, and informed them "that the King, Lords, and Commons, our supreme Legislature," had "determined it to be expedient to enable his Majesty to make a certain and adequate provision for the support of the civil government in the colonies," as his Majesty should judge necessary.<sup>2</sup> He explained his refusal to accept the appropriation as a step merely consistent with his duty to the king, and offered the further empty explanation: "Before the close of the present session, I shall assent to, or reject the bills which shall have passed the two Houses, as it shall appear to me the same duty requires of me."<sup>3</sup>

At the time of its protest of June 19, 1771, against holding the General Court at Cambridge, the house stated that according to the charter, the governor and other civil officers were to be supported "by the free gift of the General Assembly;" and that the governor, by the charter, was to reside within the province, and be supported "by the free grants of the people."<sup>4</sup> This position was maintained one year later when the consideration of a grant to the governor was again proposed. The rejection of the appropriation bill of 1771 put the house "wholly at a loss to account for that measure," unless provision was made for the support of his excellency, "otherwise than by grants and acts of the General Assembly of the province." They insisted both that the governor should receive financial support and that it should come through appropriation by the General Court. They therefore asked for exact information concerning the sources whence the governor was receiving his salary. The

<sup>1</sup> *Speeches of the Governors*, 298.

<sup>2</sup> *Ibid.*, 299.

<sup>3</sup> *Ibid.*, 298.

<sup>4</sup> *Ibid.*, 303.

reply came at the time Hutchinson adjourned the General Court to Boston. In his message of June 13, 1772, he announced definitely that the king had provided for his support, and stated most suggestively that, "as this is judged to be an adequate support, I must conclude it cannot be his Majesty's pleasure, that, without his special permission, which has not yet been signified to me, I should accept of any grant from the province, in consideration of the ordinary government services done, or to be done, by me."<sup>1</sup>

Thus understanding the situation, the house reviewed the constitutional question<sup>2</sup> and maintained that by the charter the General Assembly had full power to provide support for the governor, to determine what should be adequate to his support, and to raise the necessary funds. The innovations were condemned, and a series of resolutions was adopted which Hutchinson soon declared to be "not well founded," but which, on the contrary, were such as tended "to alter the constitutional dependence of this colony upon the Crown, and upon the Supreme Legislative authority of Great Britain."<sup>3</sup> In this address of July 14, 1772, he also explained the situation, both historically and constitutionally, and concluded by informing the house that they could not expect him even to petition, in pursuance of their resolves, that he might be allowed to receive a portion of his support from them.<sup>4</sup> The interpretation commonly placed upon the charter by the colonists was emphatically denied, and one point of vantage, long desired by the home government, was at last secured. The attainment of it, however, involved a denial of claims long and honestly maintained by the colonists, and by increasing its burden weakened the party which, for the moment, was politically successful. Success, nevertheless, gained under such circumstances, brought to

<sup>1</sup> *Speeches of the Governors*, 325.

<sup>2</sup> *Ibid.*, 325-329.

<sup>3</sup> *Ibid.*, 331.

<sup>4</sup> *Ibid.*, 336.

the defeated equal advantage, in that it helped to define a problem whose solution could be effected only by extreme and dangerous measures or by compromise. The character and the conviction of both parties prevented the latter; toward the former an appreciable impetus was given by the controversy over the governor's salary.

Closely associated with the effort of the crown thus to control the executive, and to render him independent of the provincial legislature, was the purpose to bring into similar subordination the provincial judiciary.<sup>1</sup> The house of representatives, learning through the secretary of the province that the governor had not acted upon the customary grants recently made to the justices of the superior court, sent to him an address, February 3, 1773, and asked that he "would be pleased to make known to them the difficulty (if any there be) in your Excellency's mind, which prevents your assenting to said grants." Upon the general situation they continue: "The people without doors are universally alarmed<sup>2</sup> with the report that salaries are fixed to the offices of the said Justices, by order of the Crown; and an unusual delay to confirm the grants now made, is judged by this House to be a sufficient apology for this inquiry."<sup>3</sup> On the following day Hutchinson informed them that an order for such an allowance of salaries had been made, although he was unable to state whether the warrants for such payments had been

<sup>1</sup> Cf. *Works* of John Adams, II., 316, 317, 328-332.

<sup>2</sup> Reply to Boston committee from Chatham, December 17, 1772: "We are greatly alarmed at the Governors Being made Independent of the grants of this province and at the Prevelant Report of the Leftenant Governors Judges of the Supearor Court of Judicatur as also the King's aturney and Sillisator Genaral being soon on that footing which if it should take affect (what will come next we know not but may easily Gess) we cannot but think it hath a direct tendency soon to compleet our Slavery . . . ." *Revolutionary Corresp.*, I., 269, Bancroft Collection.

<sup>3</sup> *Speeches of the Governors*, 365.

issued.<sup>1</sup> This message, as its author later said, was "represented with much warmth" by the house.<sup>2</sup> Their reply, as reported by a committee of seven, including Samuel Adams and John Hancock, and presented on February 12, 1773, gave strong expression to the prevailing sentiment. The optimistic reference to the independence of the judiciary, made by King George III., in the speech on his accession to the throne,<sup>3</sup> was quoted, and allusion made to the probable misinformation upon which it was based. They expressed their conviction that it had been the design of the administration to overthrow the constitution, and to introduce arbitrary rule into the province, and they insisted that when they considered the many attempts that had been made to render void those clauses in the charter upon which the freedom of the constitution depended, they "should be lost to all public feeling, should" they "not manifest a just resentment."<sup>4</sup> It was their opinion, furthermore, that no judge who had a "due regard to justice, or even to his own character, would choose to be placed under such an undue bias as they must be under, in the opinion of this House, by accepting of, and becoming dependent for their salaries upon the Crown."<sup>5</sup> They awaited an early assurance from the governor that the justices would refuse such support, granted thus in a manner not only obnoxious to the views of men of the province but even "repugnant to the charter, and utterly inconsistent with the safety of the rights, liberties, and properties of the people."<sup>6</sup>

<sup>1</sup> *Speeches of the Governors*, 365. Cf. Hutchinson, *History of Massachusetts*, III., 386.

<sup>2</sup> *Ibid.*, III., 387.

<sup>3</sup> Cf. *Parliamentary History*, XV., 1007. *Annual Register*, 1761, 5th edit., part I., 243.

<sup>4</sup> *Speeches of the Governors of Mass.*, 366. Cf. Hutchinson, *History of Massachusetts*, III., 387.

<sup>5</sup> *Speeches of the Governors*, 366.

<sup>6</sup> *Ibid.*, 366, 367.

Such assurance not coming at once, the house, on February 16, again addressed the governor, and asked whether he could satisfy it that the justices of the superior court had refused or would refuse to accept support from the crown; an affirmative answer to which would "tend to promote his Majesty's service, and the peace and happiness of the people."<sup>1</sup> Immediately Hutchinson responded: "I most certainly am not able, to inform you, that the Justices of the Superior Court have refused, or will refuse, to accept of their support from the Crown."<sup>2</sup> With the attitude of the governor thus by implication made clear, the house put itself on record by the adoption, on March 3, 1773, of a series of resolutions bearing upon the matter at issue. Reference was made in these to the acts of parliament of the preceding decade in accordance with which the king, "against the consent of the people," had appropriated a part of the provincial revenue to the support of a royal governor, and now was about to make a similar appropriation for the judiciary. The unrestricted authority of parliament to legislate for the colonies was denied. The unlimited power of the General Court over the assessment, collection, and disposal of provincial revenue was asserted. They added that the dependence of the judges on the crown was unconstitutional, and destructive of that civil security which should pertain to a due execution of law; that it tended to oppression and "to the subversion of justice and equity;"<sup>3</sup> and,

<sup>1</sup> *Speeches of the Governors*, 367.

<sup>2</sup> *Ibid.*

<sup>3</sup> Cf. action of Braintree, March, 1773: resolved, "That all civil officers are or ought to be Servants to the people & dependent on them for their official Support; and every instance to the contrary from [the] Governor downwards tends to crush & destroy civil liberty." *Revolutionary Corresp.*, I., 194, Bancroft Collection.

Cf. action of Bristol, March 9, 1773: "the placing of Officers and Judges over us without our Consent and Affixing them their Stipends from home we hold is a Manifest Breach of the Law (Saving His Excellency the Governor and the Councell) and that them we have an undoubted Right to Stipulate with for their hire." *Ibid.*, I., 207.

furthermore, that any superior court judge holding commission during the pleasure of the king, who should accept the support of the crown independent of the grants of the General Court, would discover to the world, that he had not a "due sense of the importance of an impartial administration of justice," that he was an "enemy to the constitution," and had it "in his heart to promote the establishment of an arbitrary government in the province."<sup>1</sup>

Some weeks after the adoption of these resolutions the two houses, in an official letter to Lord Dartmouth,<sup>2</sup> invoked his interposition for the recall of the warrants for the judges' salaries, if already issued, and urged strongly the protection of their charter rights, rights among which, they insist, was "the supporting of the officers of the Crown, by grants from the Assembly; and in an especial manner, the supporting of the Judges in the same way, on whose judgment the province is dependent, in the most important cases of life, liberty and property."<sup>3</sup> Such an appeal, however, could avail little. The policy of the home government was fixed, and the natural course for the royal judges, as for the governor, was to accept the grant from the king and decline the provincial allowance. Such a step would have the advantage of presenting to both parties a definite issue, leading necessarily to some immediate and decisive result. This it did present, and the development of the problem was such that the colonists themselves, as in other cases, were obliged to make the first effort at its solution. Although postponed for some months after the letter was sent in June to Dartmouth, the final

<sup>1</sup> *Speeches of the Governors*, 397, 398. As to the last resolve: "This resolve, like many others, was ambiguous and delusive." Hutchinson, *History of Mass.*, III., 390.

<sup>2</sup> Dated June 29, 1773. References are made to this, and a general view of the contest is given, in the letter of Thomas Cushing, Boston, August 22, 1773, to the Earl of Dartmouth. Stevens, *Fac-similes*, no. 2028.

<sup>3</sup> *Speeches of the Governors*, 399.

action necessarily was extreme, for it was recognized that upon this matter "the increase of troubles rendered all expedients insignificant and vain."<sup>1</sup>

The step now taken by the colonists was, in brief, an effort to subordinate the judiciary to the legislature, and to assert even to the utmost the control of the provincial assembly over the judges. The latter were asked to give assurance that they would not accept financial support from the crown. In response the reasonableness, and even the necessity, of such support was suggested,<sup>2</sup> and a palliation by some attempted of the prospective conquest of provincial judges by royal gold.<sup>3</sup> No cavilling availed; nor would the representatives entertain uncertain professions. Their determination to make the judges financially dependent on the colonial assembly resulted in drawing from each associate judge on the superior court bench a plainly stated assurance that no part of any salary granted by the king would be accepted.

In a measure, the colonists were successful. From Chief Justice Peter Oliver, however, could not be extorted the guarantee given by his associates. He stood alone in maintaining his position. His fortitude and his own confident justification were answered by a blunt remonstrance from the house to the governor and council, in which Oliver's perversity and corruption, his hostility to the established forms of government, and his undue bias, were cited in support of

<sup>1</sup> Hutchinson, *History of Massachusetts*, III., 390.

<sup>2</sup> In this connection it is significant to notice that on February 19, 1779, Judges Wm. Cushing, Jedediah Foster, David Sewall, and James Sullivan, notified the house of representatives that they would be obliged to resign their commissions, as with the allowances granted they were unable to perform their duties "with any Degree of Reputation or Justice to their Families, . . . ." *Journal, House of Representatives*.

<sup>3</sup> Cf. Abington committee to Boston committee of correspondence, July 29, 1773: "Well might the inspired Penman pronounce the love of Money the Root of all Evil." *Revolutionary Corresp.*, I., 115, Bancroft Collection.

a demand for his prompt removal.<sup>1</sup> This the governor, interpreting his own powers, did not lay before the council, but answered himself, and to the effect that a compliance with its request would constitute a breach of his official trust. Thereupon the house appealed to the council for guidance, while to the governor was addressed a further petition, read by the speaker in the presence of the whole house. Their request that in the matters under consideration the governor should act only upon the advice of the council was promptly denied.

The house then had recourse to a more determined step.<sup>2</sup> It was immediately voted to impeach the chief justice,<sup>3</sup> and a committee was ordered to draw articles of impeachment.<sup>4</sup>

<sup>1</sup> Cf. Hutchinson, *History of Massachusetts*, III., 444.

<sup>2</sup> T. Hutchinson, Boston, April 7, 1773 [to Israel Williams]: "I have been in the Court a long time, but I do not remember ever to have known before a House of Representatives capable of voting unanimously according to the direction of their leader, and yet this seems to have been the case with the late House, for I could not find any of them who could give any account of their messages after they had voted them." *Letters of T. Hutchinson to Israel Williams*, 61, Bancroft Collection.

<sup>3</sup> Cf. *Ibid.* to *Ibid.*, Boston, July 20, 1773: "I pitied the poor members, more than one half of them being forced to vote *in verba magistri* either directly against their judgment, or without understanding what they voted." *Ibid.*, 65.

<sup>4</sup> Cf. *Works of John Adams*, I., 137, *et seq.*

<sup>4</sup> In these the formal statement is that Oliver "did on or about the tenth Day of January 1774 at Boston in the County of Suffolk, take and receive and resolve for the future to take and receive from his Majesty's Ministers and Servants, a Grant or Salary for his Services as Chief Justice of the said Superior Court against his own knowledge of the said Charter and of the way and manner prescribed therein for the support of his Majesty's Government in the Province, and contrary to uninterrupted and approved usage and Custom since the erecting and Constituting of the said Court." They reserve significantly the "Liberty of exhibiting at any time hereafter to the Governor and Council or to the Council only, any Complaints . . . ." The articles are given with Oliver's letter to the house of representatives, Middleborough, February 3, 1774. *Revolutionary Corresp.*, III., 21-31, Bancroft Collection. The articles of impeachment were printed in the *Essex Gazette*, no. 293, March 1-8, 1774, and in *Mass. Gazette*, (Draper), March 3.

The governor was asked to be in the chair, that the articles might be presented formally to governor and council. The governor, however, would admit neither the propriety of the action nor his own competency in the case. Again the house was checked in its plan. Nevertheless, the governor's presence in the chair was presumed, and under that supposition the articles of impeachment were read. It was insisted that there must be within the province some power qualified to determine upon the misdemeanors of public officers and to effect their removal. According to the house the governor and council were qualified. In the opinion of the governor, he was obliged to act with the council only in two specified cases, neither of which was the one in question. Several possibilities, as that the council might proceed alone to act as the judicial body, confronted the governor, and to throw the whole matter again into the suspense of inaction he resolved to prorogue the General Court. This act was not accompanied, as usual, by the assembling of both houses before the governor in the council chamber to hear his closing speech, but, instead, the province secretary was sent to each house and there made the announcement. Now, however, as again some few months later, he was kept waiting outside the closed door of the house of representatives until that body, warned only when the message was being read to the council, had time in which to provide somewhat for the future and to declare that they had done all that, "in the capacity of representatives of the people in this court, can be done, for the removal of Peter Oliver, esq., the chief justice, from his seat in the superior court; and that it must be presumed that the governor's refusing to take any measures therein, is because he also receives his support from the crown."<sup>1</sup> Some days thereafter the Gen-

<sup>1</sup> Hutchinson, *History of Massachusetts*, III., 453, 454.

eral Court was dissolved by executive proclamation.<sup>1</sup> Then, as the governor himself later wrote, "All legislative, as well as executive power was gone, and the danger of revolt was daily increasing."<sup>2</sup>

In no department was this imminent anarchy more striking than in the judicial, in which now no settlement had been reached, and in which the postponement of such could serve little purpose other than the increase of tension and the removal of any possibility of amicable accommodation. Oliver remained unmoved in his convenient and helpful conviction that stipends from the crown might be legally accepted. The maintenance of the opposite view by the colonists was enforced by their repeated and outspoken refusal to be sworn as jurors in any court in which the proscribed chief justice might be upon the bench. Thus the situation was one of suppressed hostility, although such it could not long remain. The contest with reference to the origin and control of the salaries of the highest provincial court rapidly disappeared, or was excluded from attention by the rise of other questions, in essence as old, but apparently grasped as the newer questions, as those of the present rather than of the past, those in connection with which the actual crisis was to arise.

The parliamentary legislation with reference to Massachusetts made this question, like others, a mere incident of the more fundamental and far-reaching issues. To be sure, the

<sup>1</sup> Cf. *Works of John Adams*, II., 335.

<sup>2</sup> Hutchinson, *History of Massachusetts*, III., 455. Abington Committee to Boston Committee of Correspondence; July 29, 1773: "A fine Goverment this!!! Is Mr. Hutchinson Governor! . . . P. S. We apprehend Mr. Hutchinson in his great Zeal for the abridgment of English Liberty need take good care least he hall the reins of Goverment too Strait, perhaps they may Snap assunder, & his Secret confidential plan tumble down aboute his Ears." *Revolutionary Corresp.*, I., 117, Bancroft Collection.

treatment early accorded Peter Oliver<sup>1</sup> was pursued vigorously in the exciting summer months, but at that time the salary question was obscured by the greater question of the establishment of courts reorganized on lines recently dictated by parliament. Upon that question, as will be seen, the conflict resulted in the summary and, as was to be proven, the permanent closing of royal courts in the province.

The acts of parliament, to one of which allusion has been made, which were passed with especial reference to Massachusetts in the spring of 1774, enforce the view indicated in the preceding paragraphs, and present, as well, an additional phase of the situation. The affairs of Massachusetts had for a decade claimed the unusual attention of the ministry, and had impressed those conversant with the situation that the interests of governors and governed had ceased even presumably or approximately to coincide. The recognition of this fact must inevitably lead to greater irritation, and to the assertion of such claims and theories as would necessitate a climax of unqualified opposition. The result of such friction and the occasion for such opposition appeared in the statutes just mentioned. Such response to the ill-tempered conduct of Massachusetts served chiefly to promote dissatisfaction, to increase the spirit of defiance, and to stimulate resistance. The parliamentary attempt to destroy the elective jury, to change the nature of the council, and to modify the competence of town meetings, involved the denial of all theories of provincial politics and government previously advanced by the colonists. Extreme adherence to those theories, if consistently maintained, would now result in an appeal to more than argument or law. The firmness of each party in the

<sup>1</sup>*Cf.* T. Hutchinson, Boston, April 12, 1774, to Israel Williams: "I leave the Chief Justice to do what he thinks fit. I know what I could have done when I was in his station." *Letters of T. Hutchinson to Israel Williams*, 85, Bancroft Collection.

support of its professions made necessary such an appeal.<sup>1</sup> The result, as will appear, was definite, and to the cause of parliament and the king it was fatal. Such, however, was no more than the natural result of the attempt to subordinate provincial governments and administration to the will of parliament, an attempt made, as it was, by a government which possessed neither wisdom nor resources sufficient to assure the success of its efforts, and made especially at an inauspicious time, at the close of a decade which had been filled with irritating events.

Great as had been the contention of the colonists for "chartered" rights, all such basis for their claims was now withdrawn. For them now it was no longer a contest over the interpretation of their charter. It became rather a contest over the continuance of the charter and over the nature of the rights therein assured to the king's subjects. The indefiniteness and incompleteness of the provincial charter, either as an instrument of government or as a guarantee of rights, had either directly occasioned or plainly made possible conflicts of opinion and of authority, the continuance of which threatened in no uncertain way the destruction of the system which it embodied. For this event, indeed, these conflicts made such direct preparation that the issue, unless modified by compromise or averted by concession, was early made plain and inevitable. Neither compromise nor concession was resorted to by the home government, but full effect

<sup>1</sup>The preamble of a report accepted by the town of Gorham, January 7, 1773, read: "We only add that our old Captain is still living. . . . Many of our Families have been inured to the Danger and fatigue of flying to Garrison. . . . many of our Watch boxes are still in being; some of our Women have been used to handle the Cartridge, and load the Musquet, and the Swords which we whet and brightned for our Enemies are not yet grown rusty." *Revolutionary Corresp.*, I., 377, Bancroft Collection. Cf. Letter of town of Lincoln, December 27, 1773. *Ibid.*, I., 513.

Cf. Diary of Nath'l Ames, Sept. 9, 1774: "appearance of Civil War." *Dedham Hist. Register*, III., 72.

was given to the possibilities inherent in the provincial elements of the Massachusetts system.

Political circumstances made such conflicts more frequent and more natural in Massachusetts than elsewhere. In a purely royal province such assertion of popular rights would have been illogical and impossible. In a typical corporate colony such limitation of local political activity and such invasion of local political independence would have been neither tolerated by one party nor attempted by the other. The union, however, of elements of both systems, and the effort to harmonize in co-ordinate lines of action parties whose interests were directly opposed, could result ultimately in little less than absolute failure. This, in essence, was the outcome of the development in Massachusetts, although it was upon other lines that the political contest was chiefly fought out, lines on which the contest could be made to appear that of America rather than that merely of Massachusetts; from which expansion the broader contest was accorded a relatively excessive significance both by contemporaneous nationalism and by subsequent patriotism.

The legislation of 1774, to which reference has been made, presented tangibly to Massachusetts not only the question of the inviolability of royal charters, but also the whole subject of the relation between parliament and the colonial and provincial dependencies.<sup>1</sup> With this became involved, then, the efforts, on the one hand, to correlate parliamentary taxation with colonial representation, and, on the other hand, to maintain the authority, throughout both the kingdom and its outlying possessions, of the administrative boards established

<sup>1</sup> Citing the statutes 4 Geo. III., ch. 15, 34; 5 Geo. III., ch. 25; 6 Geo. III., ch. 52; 7 Geo. III., ch. 41, 46; 8 Geo. III., ch. 22; the three statutes relative to Massachusetts, the Canada Bill, and the Dock Yard Act, Joseph Warren wrote to Joseph Hawley: "Upon a careful examination of the above Acts I am fully of opinion that they more than justify the 11th Resolve of the continental Congress concerning them." *Hawley Papers*, II., Bancroft Collection.

by parliament.<sup>1</sup> This led naturally to a discussion of the entire relations between the home government and its American possessions.<sup>2</sup> Upon the first of these matters much, incidental to general history, has been written, and commonly in a uniform strain. The history of the time has been well threshed. Not, however, until recently has it become possible to treat the constitutional question adequately and in a way consistent with modern scientific thought. It should be unnecessary, and it is beyond the present purpose, to enter again the discussion of the political and constitutional questions then involved. Suffice it to insist upon the obvious and general features shown in the development of those relations. In these features will be emphasized a lack of concord in interests which will do much to make the Revolution appear not as a distinct political episode occasioned by disruptive influences spontaneously created and suddenly given full play, but rather as the normal ending of years of faithful adherence to divergent policies, of the firm maintenance of incompatible political theories, and of bitter dispute over the fundamental principles upon which political society rests and by which it is controlled.

In a large measure, the history of the colony and of the province was the preparation for the Revolution.<sup>3</sup> The

<sup>1</sup> Cf. District of Montague, to Boston committee of correspondence, April 6, 1773: "How ministerial Instructions have So much to do with our Constitution as that one Branch of our Legislature should become a meer ministerial Engine we find not: Since the Governor, Council & House of Representatives are by Charter constituted a compleat Legislative Body with inherent Powers to make all Laws for ordering, regulating & taxing the Inhabitants of the Province." *Revolutionary Corresp.*, Bancroft Collection, I., 645.

<sup>2</sup> E. g., as to control of manufactures and trade, see action of Mendon, March 1, 1773. *Revolutionary Corresp.*, Bancroft Collection, I., 640, 641.

<sup>3</sup> Cf. *Letters of Horace Walpole*, IV., 479. Wynne, *British Empire in America*, II., 380. Pownall, *Administration of the Colonies*, 102.

<sup>4</sup> Cf. *Annual Register*, 1765, 3d Edit., part I, p. 24.

<sup>5</sup> The contests over the vetoing of the choice of speaker and of councillors, the

demagoguism of such as Samuel Adams imparted to that epoch a theatrical spontaneity which to some may have excluded any thought of the period preceding the outburst. Yet in those decades had been operating influences both silent and strong which, when attaining expression, were to make it undeniable that the position of the colonists was anomalous in many ways, with reference both to theory and to fact. For two centuries, or for a longer period, the thought of Englishmen had been directed to those new lines of social, ecclesiastical, and, later, of political organization, the recognition of which was ultimately to give political life of a new type to the English subject. Such reorganization of political society was first effected in the New England colonies. There were implanted those ideas of religion, of politics, and of economics which were to be thrown into such significant prominence in the early years of George III. To him and his ministers the growth of those ideas presented a new and an ominous problem in colonial administration. It was so presented that, unless the administration should prove untrue to its trust or the colonists should inconsistently renounce their professions, a permanent decision could be attained only after the employment of sufficient force to revolutionize the provincial government. This, in reality, was the conclusion reached after parliament essayed fundamentally to alter the constitutional arrangements based on the charter of 1691. The steps thereafter are clearly defined. The enforcement of the statutory reforms precipitated the struggle in regard to the new mandamus council and the newly prescribed royal courts. It introduced the sudden

trouble with reference to the letters of Hutchinson and to the delivery of the Castle, the proposal to tax the property of royal customs commissioners, the disputes even over the use of the regnal dates and over the style of enactment, and several other incidents, might be adduced to enforce still more strongly the views suggested.

accession to large power of various extra-constitutional bodies. It was promptly followed by the organization of a revolutionary body representing the entire province, and by the institution of effective provisional government.

## CHAPTER III

### THE END OF PROVINCIAL GOVERNMENT

#### § 1. *The Mandamus Council*

IN the American provinces the council, whether as a component of the legislature or as an administrative and judicial body, was an instrument of royalty. It was such in Massachusetts until the election of Bowdoin to the upper house;<sup>1</sup> at that time the opponents of the Hutchinson faction were given a leader who was able permanently to transfer the support of the council from the king's governor to the people's house of representatives.<sup>2</sup> For the final years of its existence the royal council became "popular" in its opinions and its policy. With house and council united against the royal executive, a radical change was necessarily effected, and thenceforward the result of the conflict was no longer doubtful. To have prevented such a combination and to mitigate the effects of any results thereof, as well as to assure the ascendancy of the home government, was the natural aim of king and parliament.<sup>3</sup> The existence of such a purpose was finally and distinctly avowed in the provisions

<sup>1</sup> Cf. Hutchinson, *History of Massachusetts*, III., 156. Cf. *Parliamentary History*, XVI., 986.

<sup>2</sup> Cf. *Ibid.*, XVI., 986.

<sup>3</sup> Cf. Thomas Hutchinson, Boston, January 26, 1769, to Israel Williams: "It is generally believed in England that we shall never have another election of Councillors. It is certainly a part of *Ld H's* plan that we should not. . . . I had no thought of this step. I rather expected a Quo Warranto or a Bill brought into Parl to disannull the Charter . . . ." *Letters of T. Hutchinson to Israel Williams*, 17, Bancroft Collection.

of the statute, 14 Geo. III., ch. 45.<sup>1</sup> By this it was enacted that after August 1 the council elected in May, in accordance with the charter of 1691, should cease to exist, and its powers be abrogated. The influential upper house was now to be succeeded by a body of similar powers appointed by the crown. With this act regulating the government of Massachusetts was sent the list of royal appointees to the new council. On the receipt of such by the governor his course was clearly defined, and, as he wrote shortly thereafter, "No time was lost in forming the new Council."<sup>2</sup> In the attempted formation of that, however, came one of the significant crises of 1774 in Massachusetts.<sup>3</sup> It was a crisis, furthermore, for which the government should have been prepared, for the future was not obscure. Even in the first week in June, when he was transmitting the list of the new council to Governor Gage, Lord Dartmouth had written: "There is little room to hope that every one of the persons whom his Majesty has appointed to be of his council, will be induced to accept that honor, for there can be no doubt that every art will be practiced to intimidate and prejudice."

As a warning, the secretary's letter was timely; as a prophecy, it was accurate.<sup>4</sup> The discussion of the earlier weeks was speedily followed by intimidation. In the discussion each side stood on ground in its own view perfectly defensible; the colonists, on the one hand, abided by their

<sup>1</sup> Cf. Speech of Lord North, March 28, 1774: "I propose, in this Bill, to take the executive power from the hands of the democratic part of the government; . . . ." *Parliamentary History*, XVII., 1193. Cf. *Charters and General Laws of Mass.*, 785-796.

<sup>2</sup> To Dartmouth, August 27, 1774. 4 *American Archives*, I., 741.

<sup>3</sup> Cf. Joseph Hawley's "Broken Hints:" "It will necessarily be a question, whether the new government of this province shall be suffered to take place at all,—or whether it shall be immediately withheld and resisted?" Niles, *Principles and Acts*, 324; *Works of John Adams*, IX., 641-643.

<sup>4</sup> Cf. "Fabius," in the *Mass. Spy*, no. 186, August 25, 1774.

charter;<sup>1</sup> on the other hand, the government party rested with equal confidence on the competency of parliament and the prerogatives of the crown.<sup>2</sup> Thus, citing analogies, it was claimed that King William had, without legal process or act of parliament, "resumed" the governments of Maryland and Pennsylvania because the conditions of the grant had been broken, "though not in so great a degree as the people of Massachusett's Bay have done."<sup>3</sup> George I., it was urged, had "resumed" the government of South Carolina, and an abundance of past examples afforded sufficient basis for the supposition that the course of king and parliament was proper and constitutional. It involved, however, an alteration of the charter of 1691, and such alteration, if not sanctioned by each of the original parties to what the colonists chose to consider a contractual instrument, was held by their reasoning to be quite beyond a pretence of constitutionality.<sup>4</sup>

<sup>1</sup> Cf. Joseph Hawley's "Broken Hints:" "It is easy to demonstrate that the regulation act will soon annihilate every thing of value in the charter, introduce perfect despotism, and render the house of representatives a mere form and ministerial engine." Niles, *Principles and Acts*, 324.

<sup>2</sup> Cf. *Parliamentary History*, XVIII., 290.

<sup>3</sup> [Sir J. Dalrymple.] *The Address of the People of Great Britain to the Inhabitants of America*, p. 49.

<sup>4</sup> Cf. Oration by Joseph Warren, at Boston, March 5, 1772: "After various struggles, which, during the tyrannic reigns of the house of Stuart, were constantly kept up between right and wrong, between liberty and slavery, the connection between Great Britain and this colony was settled in the reign of king William and queen Mary, by a compact, the conditions of which were expressed in a charter; . . ." Niles, *Principles and Acts*, 5.

Cf. Oration by Joseph Warren, at Boston, March 6, 1775: "And it is evident that the property in this country has been acquired by our own labor; it is the duty of the people of Great Britain, to produce some compact in which we have explicitly given up to them a right to dispose of our persons or property." *Ibid.*, 19.

Cf. Oration by James Lovell, at Boston, April 2, 1771: "The king of England was said to be the royal landlord of this territory; with HIM they entered into mutual, sacred compact, by which the price of tenure and the *rules of management*, were fairly stated." *Ibid.*, 3.

Cf. Oration by Peter Thacher, at Watertown, March 5, 1776: "When the

The document was not, in their view, a grant alterable or revocable at the will of the grantor, but rather an affirmation and guarantee of certain rights and relations which could not be legally set aside by either party acting independently.<sup>1</sup> Divergent lines of thought and action necessarily resulted from such views. Under the circumstances, it was not by argument that a conclusion could be reached. The possibility of harmony was daily decreasing, and when, on August 8, 1774, Governor Gage assembled the new council and appointed a further meeting for August 16, the people saw the threatened destruction of their charter, and knew how to act. Owing to the inadequacy of the royal government their acts were effective, even if so radical as to be reprehensible. The treatment accorded the newly appointed councillors was, to be sure, hardly praiseworthy; less so, however, was the course of the government in allowing the possibility of such treatment. The action of the people at first took a thoroughly disorderly turn. After the success ambition of princes induces them to break over the sacred barriers of social compact, and to violate those rights, which it is their duty to defend, they will leave no methods un essayed to bring the People to acquiesce in their unjustifiable encroachments." *Ibid.*, 23.

*Cf.* Message of house of representatives to lieut. gov., August 1, 1770: "It is true, we consider the charter as such a compact, and agree that both parties are held." *Speeches of the Governors*, 246.

*Cf.* Protest of house of representatives, June 19, 1771. *Ibid.*, 302.

<sup>1</sup> Lexington, December 31, 1772, passes a vote referring to the charter as "a sacred Compact between them & the Crown . . ." *Revolutionary Corresp.*, I., 493, Bancroft Collection.

*Cf.* Report accepted by the conference at Boston, August 27, 1774: "whereas no power on earth hath a right without the consent of this Province, to alter the minutest tittle of its Charter . . ." *Revolutionary Corresp.*, III., 61-63, Bancroft Collection. *Cf. Ibid.*, I., 1021. Attleborough, January 18, 1773, to Boston committee: "our Subjection to the Crown of Great Britain must be considered as an act of our own Election. how far that Subjection was made and in what manner, the British Government Can Possibly Reach over the Atlantic to have any Influence at all upon us, is known only by the Stipulation Between us and the King of Great Britain Expressed in our Charter; . . ." *Ibid.*, I., 136.

of efforts of that type they were willing to take merely a defensive position free from violence.

As in the overthrow of the royal courts, the Massachusetts men went quickly and vigorously beyond the limits of propriety, so in their disposal of this equally obnoxious portion of the royal government, their actions were early such as to secure success, if not commendation.<sup>1</sup> In brief, when the list of nominees was made known, a prompt effort was made to induce the colonists in question to decline the oaths of office, or, if they had been taken, to resign their mandamus appointments. A council named by the king was naturally not a body of men disposed to follow the dictates of the colonial mob; from which divergence of interests and affilia-

<sup>1</sup> *Boston Gazette*, no. 1012, September 5, 1774, states that on August 27, 1000 men of Worcester county called on John Murray and demanded his resignation from the Council and his publication of it by September 10. Murray was one of the 13 who took the oath on August 16; he retired to Boston on signs of trouble.

*Ibid.*, contains an account of Thomas Oliver's resigning when his house at Cambridge was, on September 2, surrounded by 4000 men.

*Ibid.*, speaks of "the new Divan (consisting of the wretched Fugitives with whom the just indignation of their respective Townsmen by a well deserved Expulsion, have filled this capital) usurped the Seats round the Council Board in Boston."

Gov. Gage to Lord Dartmouth, Salem, August 27, 1774, mentions the episode on the road near Worcester when the crowd used force on Mr. Ruggles "with intent to stop him, but he made his way through them." "Mr. Ruggles, of the new Council, is afraid to take his seat as Judge of the Inferior Court, which sets at Worcester, on the 7th of next month; . . ." Gage refers to the possibility of being obliged to send troops thither. *Parliamentary History*, XVIII., 90; also in 4 *American Archives*, I., 741-743. In his letter September 2, 1774, to Lord Dartmouth, Gage mentioned the enforced retreat to Boston of Ruggles, Edson, Murray, Leonard, Loring, and Pepperell, the forced resignation of Paine, and the ill treatment of Willard in Connecticut. *Parliamentary History*, XVIII., 94; also in 4 *American Archives*, I., 767. He mentions 7 resignations.

In his diary for 1774 Peter Oliver wrote: "Nothing but mobs and riots all this summer. Wednesday the 14th of Sep'r I was mobbed." *Diary and Letters of Thos. Hutchinson*, I., 151.

Cf. Frothingham, *History of Charlestown*, 302-305. Cf. Letter of Thomas Oliver, September 7, 1774, in *Mass. Gazette* (Draper), no. 3702, September 8, 1774.

tions arose an obvious occasion for the persuasion even of violence.<sup>1</sup> To threats of personal harm and to the ill bodings of a thoroughly aroused and resolute people the new councillors of necessity yielded, and to Gage was left from the original thirty-six a number insufficient to form a quorum.<sup>2</sup> He was then, as a colonist wrote, "reduced to a miserable dilemma—the Council is daily forsaking him."<sup>3</sup> But even supposing the theoretical completeness of his new council, Gage at the same time foresaw a further possibility when he wrote to Lord Dartmouth: "The Council being formed, the Assembly must act with it, or annihilate the Legislature, and there is a surmise that will be the case;"<sup>4</sup> and with keen understanding he soon thereafter outlined the situation with remarkable clearness for one in his position when he admitted that civil government was "near its end,"<sup>5</sup> and continued: "Precepts are issued for the calling an assembly in the beginning of next month, though uncertain whether the

<sup>1</sup> Cf. *New York Journal*, no. 1654.

<sup>2</sup> Gov. Gage to Lord Dartmouth, August 27, 1774, says 24 "have accepted the honor." *Parliamentary History*, XVIII., 90.

As to the taking of the oath on August 8 by 11 councillors, including Lt. Gov. Oliver, see *Boston Gazette*, no. 1009, August 15, 1774; the report of the taking of the oath by 11 others on August 16 in the *Boston Gazette*, no. 1010, August 22, 1774. Yet W. H. Whitmore, *The Massachusetts Civil List*, p. 172, says only 10 took the oath of office. Only 14 of the 36 remained in service. *Acts and Resolves of Mass.*, V., 507; *Essex Institute Historical Collections*, XIII., 33. In *The New England Historical and Genealogical Register*, XXVIII., 61, 62, is a list of 24 who were sworn in; and a list of 9 of these who resigned. In *Journal and Letters of Samuel Curwen*, N. Y., 1842, p. 438, is given a list of 10, presumably those who alone took the oath of office.

<sup>3</sup> Nath'l Noyes, Boston, August 30, 1774. *New England Historical and Genealogical Register*, April, 1889.

<sup>4</sup> Gov. Gage to Lord Dartmouth, Salem, August 27, 1774. 4 *American Archives*, I., 741-743.

<sup>5</sup> On September 11, 1774, King George wrote to Lord North: ". . . the dye [sic] is now cast, the Colonies must either submit or triumph." Donne, *Correspondence of George III. with Lord North*, I., 202.

people will chuse representatives: but we may be assured if chosen they will not act with the new council; and it is supposed, the project has been to annihilate the said council, before meeting, to throw the refusal upon the governor to act with the old council elected last session; so that we shall shortly be without law or legislative power."<sup>1</sup>

This forecast by the governor was remarkably accurate.<sup>2</sup> The towns uniformly instructed their representatives to give no regard to the mandamus council;<sup>3</sup> they threw upon the executive the responsibility for his refusal to act with the old council; and disregarding as illegal the governor's intermediate revocation of writs of election, they proceeded upon the authority of the towns and began to "organize the revolution."<sup>4</sup> The destruction of the mandamus council thus was only one step towards the dissolution of royal authority in Massachusetts. Considered by itself the attempt thus summarily to regulate the colonial upper house was one phase in a rapidly unfolding series of events; the effort was characteristic of the aims and methods of the home government; the result was indicative of the approach of a new era. The action of the towns attained its end;<sup>5</sup> the new council was

<sup>1</sup> Gov. Gage to Lord Dartmouth, September 2, 1774. *Parliamentary History*, XVIII., 96, 97.

September 4, 1774, Paul Revere wrote to John Lamb: ". . . our new-fangled counsellors are resigning their places every day; . . ." Frothingham, *Life of Warren*, 359.

<sup>2</sup> "The late Act for better regulating the civil government of this province has operated just as I expected it would. It has, in effect, dissolved the Government. The people will never acknowledge the new counsellors. . . . A stop is also put to the holding the courts of justice upon the new plan. Thus we have neither legislative nor executive powers left in the province." Boston letter of September 13, 1774, in *London Chronicle*, November 18, 1774. Frothingham, *Life of Joseph Warren*, 373.

<sup>3</sup> E. g., *Boston Town Records*, XVIII., 192.

<sup>4</sup> Lecky, *History of England in the Eighteenth Century*, III., 420.

<sup>5</sup> For instructions or votes of towns against the recognition of this Council,

without recognition and without power. The body was from the beginning a nullity, and received no more subsequent notice than was involved in the repeated votes of the Provincial Congress directed against those who had received, and had not resigned, mandamus commissions.

### § 2. *Withdrawal of the Royal Executive*

It is evident that after the events of August, September, and October, 1774, the royal governor became an official whose authority and whose functions were largely titular.<sup>1</sup> His legislative powers, while no General Court existed, were virtually in suspense; the enforced adjournment of royal courts limited, and practically removed, the possibility of an exercise of judicial functions by the head of the province; and the legal action of the governor upon such matters, as well as upon many affairs of an executive nature, was made impossible by the complications which had deprived him of a council. The subordinate departments of the executive branch transferred, with practical uniformity, their recognition and their obedience to the representatives of the people in the Provincial Congress, and the effective authority of Gage

see: for Town of Lexington, September 26, 1774, Hudson, *History of Lexington*, 103; Framingham, September 30, 1774, Barry, *History of Framingham*, 91; Boston, September 21, 1774, *Boston Gazette*, no. 1015, September 26, 1774; Cambridge, October 3, 1774, Holliston, October 3, 1774, Malden, September 20, 1774, *Lincoln Papers*, Library of the American Antiquarian Society.

<sup>1</sup> Cf. Samuel Peters, Boston, October 1, 1774, to Rev. Dr. Auchmuty, New York: Speaks of the uprising on September 4, "when the Preachers & Magistrates left the Pulpit &c for the Gun and Drum, and set off for Boston, cursing the King, Lord North, Genl Gage, the Bishops, and their cursed Curates, and the Church of England and for my telling the Church People not to take up Arms &c it being high Treason &c the Sons of Liberty have almost killd one of my Church, Tarrd and feathered two, abused others, and on 6th day destroyed my Windows & Rent my Cloaths—even my Gown & Cassock &c crying out damn the Church, the Rags of Popery &c &c their Rebellion is obvious, Treason is common, and Barbarity is their daily Diversion—the Lord deliver us from Anarchy." *Revolutionary Corresp.*, II., 273, Bancroft Collection.

was limited in its extent to the zone of British military influence; the development is shown in the manner in which, in this man holding one commission as a chief executive and another as a military commander, the character and activity of the former official disappear in those of the latter.

The assembling of such a body as the Provincial Congress fell properly within the cognizance of the royal governor, and the position taken by it in its assertions and actions made essential on his part some treatment of the body which would define its nature and the character of its acts, and which would effectually impose upon it the responsibility for its course. Gage did endeavor to convince the Congress of the illegality of its course and of its responsibility for the consequences; but words alone could not suffice. The early interchange of views between the governor and those whom he desired to consider revolutionists, served merely to define the spirit of the two parties and to emphasize even then the futility of efforts at reconciliation on any basis that could possibly be acceptable to all concerned. The futility of these is indicated, as are other elements of the discussion, in the suggestive words used at the conclusion of the second address of the Congress to Governor Gage: "And although we are willing to put the most favorable construction on the warning you have been pleased to give us of the 'rock on which we are,' we beg leave to inform you that our constituents do not expect, that, in the execution of that important trust which they have reposed in us, we should be wholly guided by your advice. We trust, sir, that we shall not fail in our duty to our country and loyalty to our king, or in a proper respect to your excellency."<sup>1</sup>

On the day after the Congress gave him this ironical treatment, the governor began a letter to Lord Dartmouth in which he said that he would "not be surprised, as the pro-

<sup>1</sup> October 29, 1774. *Journal of the Provincial Congress*, 44, 45.

vincial congress seems to proceed higher and higher in their determinations, if persons should be authorized by them to grant commissions, and assume every power of a legal government, for their edicts are implicitly obeyed throughout the province."<sup>1</sup> Along just this line did the congress proceed. After its establishment two authorities aimed to administer government in the same province. The relative influence of the two was shown plainly enough in the failure of Brigadier Ruggles to gain adherents to his tory "association," and in the result of Gage's effort to support with a military force his sympathizers in the town of Marshfield.<sup>2</sup>

With the approach of the time when, according to the charter, the election of representatives to the General Court was to be held throughout the province, Gage was given a definite opportunity to improve his position, an opportunity, however, which was soon lost. On April 1, 1775, the Congress took up the consideration of the proper course of the towns, "in case general Gage should send out his precepts for convening a new assembly, on the last Wednesday of May next, and what ought to be their conduct in case he should not send out his writs."<sup>3</sup> Thereupon, it was first resolved that "in case writs, in the form the law directs, should be issued, they ought to be obeyed."<sup>4</sup> It was furthermore resolved that "in case writs should not be issued forth,

<sup>1</sup> *Parliamentary History*, XVIII., 105.

*Cf.* James Warren, Plymouth, January 1, 1775, to Samuel Adams; referring to the tories, he continues: "Ruggles' Impudence is an Example for them, and the publication [sic] of Massachusitensis are read with more devotion & Esteem than Holy writt." *Adams Papers*, Bancroft Collection.

<sup>2</sup> *Cf. Journal of the Provincial Congress*, 104.

*Cf.* [Samuel Adams to A. Lee?], March 4, 1775: "The Town of Marshfield, have lately applied to G. Gage for leave to have a meeting, according to the Act of Parliament, . . . . They will be dealt with according to the Law of the Continental Congress." *Adams Papers*, Bancroft Collection.

*Cf.* Winsor, *History of Duxbury*, 126-129.

<sup>3</sup> *Journals of the Provincial Congress*, 116.

<sup>4</sup> *Ibid.*

that a Congress be called, on the last Wednesday of May next; and in case general Gage should not issue precepts for calling an assembly, as the law directs, the members of the towns of Charlestown, Cambridge, Brookline, Roxbury, and Dorchester, be desired to publish this resolve and appoint a place where they shall assemble.”<sup>1</sup> Col. Warren, Mr. Adams, and Mr. Gill immediately reported these resolutions in form for publication, and they were then ratified, with the addition to the first resolution that, if the towns should obey the precepts to be issued by Gage, they should instruct their representatives to “transact no business with the council, appointed by mandamus; and if they should be dissolved, to meet in a Provincial Congress, for the purpose of considering and transacting the affairs of this colony.”<sup>2</sup>

The writs thus contemplated were issued, but the possibilities suggested were now removed by the commencement of hostilities, as the Congress stated it, “by the troops under the command of general Gage, . . . .”<sup>3</sup> The natural result was such action as that of April 28, when the Congress appointed a committee to consider “the propriety of recommending to the several towns and districts in this colony, that they take no notice of the precepts lately issued by general Gage, for calling a general assembly.”<sup>4</sup> This matter was further considered on May 4, when a motion was made to appoint a committee to report a resolution reconsidering the action of April 1; upon this, after a long debate, the motion was carried by a vote of 94 to 13.<sup>5</sup> For this duty, Col. Warren, Mr. Gerry, and three associates were appointed,<sup>5</sup> and their report was rendered and accepted on the following day. The resolution of April 1, inasmuch as “many reasons now prevail to convince us that consequences of a dangerous nature would result from the operation of

<sup>1</sup> *Journals of the Provincial Congress*, 116.

<sup>2</sup> *Ibid.*, 116.

<sup>3</sup> *Ibid.*, 154.

<sup>4</sup> *Ibid.*, 163.

<sup>5</sup> *Ibid.*, 190.

that resolution,"<sup>1</sup> is to be considered null and void. Furthermore, owing to the "clandestine and perfidious" destruction of the stores at Concord, to the fact that some inhabitants have been "illegally, wantonly and inhumanly slaughtered by the troops," and to the course of Gage as "an instrument in the hands of an arbitrary ministry to enslave this people," they resolve that "the said general Gage hath, by these means, and many others, utterly disqualified himself to serve this colony as a governor, and in every other capacity, and that no obedience ought, in future, to be paid by the several towns and districts in this colony, to his writs for calling an assembly, or to his proclamations, or to any other of his acts or doings; but that, on the other hand, he ought to be considered and guarded against, as an unnatural and inveterate enemy to this country."<sup>2</sup> The attitude of the Provincial Congress and the position of the governor were thus clearly defined, and their future relations with each other made plain. During this period of the second Provincial Congress, Gage was brought to the attention of its members by disconnected and less important acts, prominent among which was the agreement reached relative to the withdrawal of the residents of Boston. His course in this matter drew from the Congress a remonstrance containing such innuendoes as in the following: that they "would not affront your excellency by the most distant insinuation, that you intended to deceive and disarm the people, by a cruel act of perfidy."<sup>3</sup> However, the uncomplimentary suggestions were not unnatural, for a state of imminent, if not actual, belligerency existed.

<sup>1</sup> *Journals of the Provincial Congress*, 192.

<sup>2</sup> *Ibid.*, 192, 193. It is characteristic that the next act of the Congress was the appointment of a committee to report a resolution recommending that the towns and districts choose delegates for a new Provincial Congress, to meet on the last Wednesday of the current month. *Ibid.*, 193.

<sup>3</sup> May 10, 1775. *Ibid.*, 213.

Such a relation was made plain enough scarcely a month later, when Gage in a vigorous proclamation<sup>1</sup> declared that a state of "avowed rebellion" had been reached by the "infuriated multitudes," led by "certain well-known incendiaries and traitors, in a fatal progression of crimes against the constitutional authority of the state, . . ." Recent acts in Massachusetts and elsewhere offered "marks of premeditation and conspiracy that would justify the fulness of chastisement;" and such especially was the act of April 19, when "many thousands . . . from behind walls and lurking holes, attacked a detachment of the king's troops, who, not expecting so consummate an act of phrenzy, unprepared for vengeance, and willing to decline it, made use of their arms only in their own defense." Amid such an "exigency of complicated calamities," the governor made his last effort to prevent the shedding of blood, and offered full pardon to all who would "lay down their arms, and return to the duties of peaceable subjects," excepting only John Hancock and Samuel Adams, "whose offences are of too flagitious a nature to admit of any other consideration than that of condign punishment." An inclusive definition of traitorous conduct was given, and martial law was proclaimed.

This proclamation had immediate effect. On June 15 the Committee of Safety, basing its action on this "very extraordinary proclamation, in which the inhabitants of Massachusetts Bay are in the most explicit manner declared rebels," and on the accounts "brought to this committee of the movements of Mr. Gage's army, and that he intends soon to make another attempt to penetrate into the country," voted that there should be an immediate increase of the provincial

<sup>1</sup> An original print of this proclamation of June 12, 1775, published June 14, is among the *Adams Papers*, Bancroft Collection.

The text is in *Journal of the Provincial Congress*, 330, 331.

Cf. John Adams, *Familiar Letters*, 64.

army.<sup>1</sup> The Congress had already, on June 13, appointed a committee to consider the proclamation,<sup>2</sup> and this was increased three days later,<sup>3</sup> when also the resolution of the Committee of Safety was referred to Major Hawley, Col. Warren, Col. Prescott, and four associates.<sup>4</sup> On the same day the committee on the proclamation reported, and their report was ordered to be printed for publication throughout the colony. This was largely an account of the events of April nineteenth and a justification of the steps taken then and immediately thereafter, when they aimed to protect their "inheritance, purchased at no less a price than the blood of many thousands of our brave ancestors," from the attack of those troops who "breathed nothing but blood and slaughter. . . ."<sup>5</sup> The occasion was taken to encourage the colonists and to prevent effective efforts by those who would help the invaders. The usual opportunity for a change of allegiance was offered and the customary steps proposed against those who did not accept pardon and come over to the colonial side. From the pardon thus offered General Gage and Admiral Graves were excepted, as well as three councillors still holding mandamus commissions—Sewall, Paxton, and Hallowell—and those native Americans, not in the army or navy, who aided the regular troops on the nineteenth, "whose offences," they follow Gage in saying, "are of too flagitious a nature to admit of any other consideration than that of condign punishment: . . . ."<sup>5</sup>

The position of Gage was made plain, even if less endurable, by the events of the day following the issue of this proclama-

<sup>1</sup> *Journal of the Provincial Congress*, 568.

<sup>2</sup> Consisting of the president, Col. Warren, Col. Palmer, Mr. Sever, and Dr. Taylor. *Ibid.*, 330.

<sup>3</sup> By the addition of Col. Otis and Mr. Johnson. *Ibid.*, 341.

<sup>4</sup> Messrs. Gerrish, Farley, Aiken, Hall. *Ibid.*, 340.

<sup>5</sup> The text is in *Ibid.*, 344-347.

tion; the increased activity in military affairs and the introduction of continental control gave sufficient seriousness to the situation to impress upon Gage the fact that his functions had become exclusively military, and that from a governor of a people he had become in their eyes an outcast and a traitor. The Committee of Safety, on July 6, resolved "that it be recommended to the honorable Provincial Congress, now sitting at Watertown, to recommend to the grand American Congress, that every crown officer, within the united colonies, be immediately seized, and held in safe custody until our friends who have been seized by General Gage are set at liberty, and fully recompensed for their loss and imprisonment."<sup>1</sup> On the next day the Provincial Congress referred the matter to a committee of five,<sup>2</sup> in whose hands the proposal seems to have "subsided;" it had, however, shown plainly enough the development of the colonial feeling toward him who was still nominally the executive, but who in reality was such no longer. The representatives of the people, met as a General Court on the basis of the "resumed" charter of 1691, declared that he had deserted the post which they still considered technically that of his duty; no longer could he claim consideration as the foundations were being laid for popular government; politically a nullity already, he soon relieved Massachusetts even of his presence.

### § 3. *Local Action in the Summer of 1774*

The opportunity offered to the patriot leaders by the consideration of questions necessarily arising from the course adopted by parliament was fully appreciated. Their policy was made plain and its pursuance easy by the decisive action of numerous town-meetings and county conventions. In August Dr. Young at Boston referred to the recent county meeting as having "originated many town meetings

<sup>1</sup> *Journal of the Provincial Congress*, 589, 590.

<sup>2</sup> *Ibid.*, 463.

which will all be called without asking his excellency's leave."<sup>1</sup> To Samuel Adams in the same letter he wrote: "The whole current of Mr. Gage's administration seems to have its course up hill."<sup>2</sup> Although in the following week Governor Gage commanded his troops to disperse a Salem town-meeting and announced that he "came to execute the laws, not to dispute them,"<sup>3</sup> yet in the first week in Septem-

<sup>1</sup> These derive additional significance from the fact that many were held during a part of the year that for much of the population was the busiest season. *e.g.*, *cf. Revolutionary Corresp.*, III., 214, Bancroft Collection.

<sup>2</sup> Dated Aug. 19, 1774. *Adams Papers*, Bancroft Collection.

*Cf.* James Warren, Boston, August 15, 1774, to Samuel Adams: "Mr. Gage sent, the day before yesterday, for the selectmen, and informed them, that he had received an act of parliament prohibiting their calling town-meetings without a license from him. They told him, that they should obey the laws of the land; . . . ." Frothingham, *Life of Warren*, 339.

*Cf. Boston Selectmen's Minutes*, XXIII., 224, 225.

<sup>3</sup> *New York Journal*, no. 1653, September 8, 1774.

Timothy Pickering, Salem, August 25, 1774, for Salem committee, to Boston committee of correspondence: stating that they had received a letter similar to that sent to all towns in the county by Marblehead committee proposing a county meeting; that they had called a town meeting to choose 5 or more delegates to meet in county conference at Ipswich, September 6. He quotes notification in full; these were printed and posted on Saturday, August 20, calling meeting for the following Wednesday. "On Wednesday morning at eight o'clock the Governour sent us a request to meet him at 9 o'clock at Col. Browne's, for 'he had something of importance to communicate to us.' We waited on him accordingly. He asked if we avowed those notifications. It was answered by one of the com'tee that it was well known that the com'tee of correspondence ordered the notifications for the meeting." A demand to disperse the people was, he writes, answered by a claim of lack of authority. "He told us he should not enter into a discourse about the matter, he came here to execute the laws, not dispute about them, & we determined to execute them. For the law he referred us to the Attorney General & Col. Browne who were present. He concluded by telling us if the people did not disperse, the Sheriff would go first; & if he was disregarded and needed support, that he would support him. This he uttered with much vehemence." Account is given by Pickering of the call of the troops, of the completion of the meeting, and the subsequent arrest of the committee, two of whom recognized in £100 each without sureties, and the rest of whom refused to give recognizances, and "the Justice sentenced them to stand committed till they should recognize; but nevertheless he let them go in peace, tho' no doubt they will again be arrested." *Revolutionary Corresp.*, Bancroft Collection, I., 809, 810.

ber he wrote to his superior that he feared his province would "shortly be without either law or legislative power."<sup>1</sup> Not long thereafter he further wrote: "They talk of fixing a plan of government of their own."<sup>2</sup> He saw that a movement of local bodies was in full progress which was to substitute a government by the people for the government of Gage and the king. The writs for the election of members of a new house of representatives occasioned not only the ordinary proceedings but, as well, a distinct repudiation of the governmental changes provided for in the act of parliament.<sup>3</sup> From the consideration of such matters as were now involved proceeded a series of suggestive assertions,<sup>4</sup> ranging all the way from the action of the town of Wilbraham, the instruction issued by which "was taken out of a newspaper,"<sup>5</sup> to

<sup>1</sup> Gov. Gage to Lord Dartmouth, September 2, 1774. *Sparks Papers*, XLIII., I., 192, Harvard College Library.

<sup>2</sup> Gov. Gage to Lord Dartmouth, September 20, 1774. *Sparks Papers*, XLIII., I., 195, Harvard College Library. 4 *American Archives*, I., 795.

<sup>3</sup> Cf. James Warren, Boston, August 15, 1774, to Samuel Adams: ". . . it is not simply the appointment of the council by the king that we complain of; it is the breach thereby made in our charter: and, if we suffer this, none of our charter-rights are worth naming; the charters of all the colonies are no more than blank paper." Frothingham, *Life of Warren*, 340.

Public sentiment was further defined in the letter written by James Warren, for the committee on donations, to the committee of Norwich August 27, 1774: "Mr. Gage may issue his precepts, and his council may sanctify them; his juries may give verdicts, and an unconstitutional and venal bench may pass judgments: but what will this avail, unless the *people* will acquiesce in them? If the *people* think them unconstitutional, of what importance are their determinations? *Salus populi suprema lex esto* is a precious old maxim. The ministry have forgotten it; but the people are determined to remember it." *Ibid.*, 350, 351; 4 *Collections of Mass. Historical Society*, IV., 46.

<sup>4</sup> Cf. Thos. Young, August 19, 1774: "Letters and resolves come in to us from all quarters, and still on the rising tenor. Thirteen were received last Tuesday evening, and many are come to hand since." Frothingham, *Life of Warren*, 342, 343.

<sup>5</sup> Action dated "Oct. 3, 1773," apparently taken October 4, 1774. *Lincoln Papers*, Library of American Antiquarian Society.

the declaration of the Suffolk county convention that no obedience was due to the late acts of parliament. The press, as usual in this transitional period, shared in the work of the people. The condition of affairs was thus described in an address to Lord North printed in the *Salem Gazette* : "Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling party, and many wrong laws, and slips of human frailty, will be borne by the people; but if a long train of abuses and artifices, all tending the same way, make the design visible to the people, and they see whither they are going, it is not to be wondered that they should rouse themselves, for specious names and forms are worse than the state of nature or pure anarchy."<sup>1</sup> The specious interpretations of right put forward by parliament should be ignored; the charter of 1691 should be adhered to with great strictness.<sup>2</sup> And so at Concord 150 committeemen of Middlesex county resolved, "that we will obey all such Civil Officers, now in Commission, whose Commissions were issued before the first day of July, 1774, and support them in the execution of their offices according to the manner usual before the late attempt to alter the Constitution of this Province; nay, even although the Governor should attempt to revoke their commissions."<sup>3</sup> So too the town of Marblehead,<sup>4</sup> in its instructions to its representatives, claimed that all officers not chosen according to the charter were without legal authority; and the Essex county conven-

<sup>1</sup> *Salem Gazette and Newbury and Marblehead Advertiser*, Vol. I., no. 8, August 19, 1774.

<sup>2</sup> Cf. Oration by Joseph Warren at Boston, March 6, 1775: "The mutilation of our charter, has made every other colony jealous for its own; for this, if once submitted to by us, would set on float the property and government of every British settlement upon the continent. If charters are not deemed sacred, how miserably precarious is everything founded upon them." Niles, *Principles and Acts*, 22.

<sup>3</sup> *Essex Gazette*, no. 320, September 6-13, 1774.

<sup>4</sup> *Essex Gazette*, no. 307, June 7-14, 1774.

tion<sup>1</sup> likewise defied parliament by asserting that town-meetings should still be called according to ancient usage and the province laws.<sup>2</sup> This point in the revolutionary program was brought out also by the Cumberland county convention<sup>3</sup> at Falmouth when it recommended that the justices and other civil officers should continue to act according to the charter, and that no one should accept a commission based on the act of parliament relative to the government of Massachusetts.

The convention of Essex county towns, in connection with the action already mentioned, resolved that a Provincial Congress was absolutely necessary and that the representatives of the various towns in the assembly should be instructed to resolve themselves into such a congress. In the same week the *Boston Gazette* had stated: "Town meetings, and county meetings, are now held and calling in all parts of the province; a provincial congress is like to be soon appointed."<sup>4</sup> These meetings having defined the attitude of the province toward the acts of parliament and the charter, their attention was further directed to the practical measures before them. Many important town-meetings were held and many equally important county conferences. A meeting of these committees from four counties was held in Faneuil Hall, Boston, on August 26, and planned resistance to the two acts and the calling of a Provincial Congress.<sup>5</sup>

<sup>1</sup> *Journal of the Provincial Congress*, 615-618.

<sup>2</sup> Cf. Action of Hampshire county convention, September 22, 23, *Journal of the Provincial Congress*, 621; cf. Action of Plymouth county convention, *Ibid.*, 624.

<sup>3</sup> *Journal of the Provincial Congress*, 657-660.

<sup>4</sup> *Boston Gazette*, no. 1012, supplement, September 5, 1774.

<sup>5</sup> Cf. Frothingham, *Rise of the Republic*, 356.

"Every town, with the utmost alacrity, chose one or more of the most respectable gentlemen, to meet in provincial congress, . . . ." Warren, *History of the American Revolution*, I., 161.

The Boston committee represented Suffolk county; Worcester, Middlesex, and

The establishment of a provisional government was by some happily planned as a necessary consequence of a firm adherence to the provincial charter. Thus the town of Danvers, while in its instructions to its representative enjoining the recognition only of the council elected in May, continued: "and as we have reason to believe that a conscientious discharge of your duty, will produce your dissolution as an house of Representatives, we do hereby empower and instruct you to join with the Members" <sup>1</sup> in forming a Provincial Congress. Similarly the town of Brookline introduced its direction to join in a Provincial Congress with the injunction to adhere to the charter, a course which they expected would soon procure the dissolution of the House.<sup>2</sup> While the maintenance of the charter was uniformly insisted upon, little emphasis was laid on the necessity of observing

Essex counties were also represented. It was voted that by the late act all judges of the superior and inferior courts and of the common pleas, the attorney general, marshals, justices of the peace, and others, were "rendered unconstitutional officers." On the next day, August 27, a committee report was accepted advocating opposition to courts held according to the late act, and expressing the opinion: "That a Provincial Congress is necessary forconcerting and executing an effectual plan for counteracting the system of Despotism mentioned, as well as for substituting referee Committees during the unconstitutionality of the Courts of Justice in the province; and that therefore each County will act wisely by choosing members as soon as may be for said Congress; and by resolutely executing its measures when recommended." *Revolutionary Corresp.*, III., 61-63, Bancroft Collection.

<sup>1</sup> September 27, 1774. *Lincoln Papers*, Library of American Antiquarian Society.

<sup>2</sup> September 27, 1774. *Lincoln Papers*. Cf. Roxbury, September 28, 1774.

A meeting of delegates from towns in Suffolk and Middlesex counties, held September 26, 1774, at Holliston, voted to choose representatives, to name the same men for a provincial congress, and to leave the time of the congress to the assembly, "because it would be needless if not improper to have two provincial Assemblies Setting at one Time—for they might supercede or counteract one another and so get into confusion."

"Because they will know when they have done as a House (which it is that will be very soon) and will be together to go immediately upon business as a Congress without loss of time, or expence of long Journies." *Revolutionary Corresp.*, III., 671-673, Bancroft Collection.

strict legality during the process of transition. Some would recognize the extremity of the situation and would act accordingly. Thus the town of Beverly instructed its representative to the October assembly "that when the said great and General Court is convened you use your endeavors that the members thereof form themselves into a Provincial Congress."<sup>1</sup> The town of Wrentham voted that it was "the Opinion of this town that a Provincial Congress is necessary and that the seventh resolve passed by the Convention in and for the County of Essex respecting said Provincial Congress is a Method which this town would choose to adopt in Case the Province in General shall adopt the same. . . ."<sup>2</sup>

Complete and definite directions were given by the towns to their representatives, and an adherence to those instructions occasioned the first steps in the transition. Prompt and plain action by the towns was the most effective element in the revolutionary beginnings in Massachusetts, and the most significant factor in the transition was the continuance of the vitality and authority of local political organisms. The recent acts of parliament had been directed not only to the alteration of the council and the abolition of the elective jury, but as well to the strict limitation of the freedom and independence of town action.<sup>3</sup> Thus for all town-meetings except the annual meetings the governor's consent was a prerequisite. By repeated adjournments a town meeting could be given an indefinite, even if constructive, continuance;<sup>4</sup> by a technicality the governor's consent was ren-

<sup>1</sup> Action of September 26, 1774. *Lincoln Papers*.

<sup>2</sup> Action of September 15, 1774. *Lincoln Papers*. Cf. Gloucester's action of September 20, 1774. *Ibid.* Cf. Boston's action of September 21, 1774. *Boston Gazette*, no. 1015, September 26, 1774. Cf. Frothingham, *Life of Warren*, 379.

<sup>3</sup> 14 Geo. III., ch. 46, § 7.

<sup>4</sup> Upon this point the *Boston Town Records* afford suggestive material, showing the long and contemporaneous extension by repeated adjournments both of the "May meeting" and of the "Port Bill meeting."

dered unnecessary, and soon the protection even of a technicality was disregarded.<sup>1</sup> The power of the executive was openly condemned, and the governor clearly recognized the situation. His own helplessness revealed more definitely by contrast the power of the towns. By them had first been asserted, and maintained, a claim for the continued exercise of customary rights, and particularly for the continuance of town-meetings as under the old system. Successful in their first effort, the towns thus secured for themselves a practically unbroken existence, and greatly promoted the organization of the revolutionary movement. Necessarily by such an addition there was brought in an element of authority, and the presence of such greatly increased the vigor and success of the colonial efforts.<sup>2</sup> By the towns the program of action was defined; under their express direction the various steps were taken. The mandamus council by threat and force was made a nullity; the constructive abdication of the governor was followed by the end of the royal legislature; the king's governor was virtually made a prisoner in Boston, and the king's treasurer was given neither recognition nor payments; by popular expressions, justifiable and other, an effective and final check was put on judicial action. The lead of the towns was followed to the end, and there was quickly attained a complete dissolution of royal government. In the general collapse there remained unaffected

<sup>1</sup>The plainest indication on the part of the colonists of some uncertainty as to the propriety of their action appeared in the letter of John Gerry, Marblehead, July 23, 1774, to Boston committee: "but altho We shall pay no Regard to ye Act respecting Town Meetings lately passed by parliament *in general*, yet we think it most prudent to have this Business finished before ye first of August . . . ." *Revolutionary Corresp.*, III., 495, Bancroft Collection.

<sup>2</sup>Milton held 19 town meetings in 1778. Teele, *History of Milton*, 420. The town-meeting of Braintree was in session 13 days in 1774, 23 days in 1777, 17 days in 1780. *Braintree Town Records*, *passim*. The Boston town meeting was in session at least 30 days in the year 1774, more than 30 days in 1775, and more than 40 days in 1779. *Boston Town Records*, *passim*.

the factor which had immediately occasioned such collapse and which was to remove the effects thereof; the town system found its justification in its service to the revolutionists when it rendered possible a quick and fairly conservative transition, free from the violent methods which usually accompany revolutions.<sup>1</sup>

#### § 4. *End of the Provincial Legislature*

The concluding period of the history of the royal legislature in Massachusetts may fitly be dated from the assembling of the General Court after the May elections of 1774. The last session of the General Court under Hutchinson had ended only after the governor's secretary had awaited its will outside the closed door; and unfortunately the new body was to exhibit no better spirit to Hutchinson's successor. The months between the two sessions had been a preparation for the crisis; the course of parliament radically changed the situation and prospects. Now many such complaints could find utterance as were expressed by Sam Adams in a letter to James Warren, when he referred to the receipt of a "copy of an Act of the British Parliament, wherein it appears that we have been tried and condemned, and are to be punished, . . . ."<sup>2</sup> Matters were at a tension; the governor rejected more than a dozen councillors; even the commencement at Harvard College was omitted;<sup>3</sup> all was sus-

<sup>1</sup> The importance of the town system in this period I have indicated in a tentative manner in an article on "The Political Activity of Massachusetts Towns during the Revolution," to be published in the *Report of the American Historical Association for 1895*.

<sup>2</sup> May 14, 1774, to James Warren, 4 *Collections of Mass. Historical Society*, IV., 390. I find a draft of this over the autograph initials of Samuel Adams, reading: "wherein it appears that the Inhabitants of this Town have been tryed and condemned and are to be punished . . . ." *Revolutionary Corresp.*, II., 17, Bancroft Collection. Another copy, with some variation, signed by Samuel Adams, is in *Ibid.*, III., 55. Cf. Frothingham, *Life of Warren*, 303.

<sup>3</sup> *Boston Gazette*, June 6, 1774.

pense. The assembly was allowed to sit only a few days in Boston, when it was "unexpectedly adjourned"<sup>1</sup> by the governor to meet at Salem, June 7.<sup>2</sup> Now, wrote Scollay, "we have all, from the cobbler up to the senator, become politicians."<sup>3</sup> Work for the politicians was abundant; the crisis came on the day when the Bostonians repudiated the faction which would pay for the tea that had been thrown into the harbor, and when at Salem the governor's secretary, who brought the writ of dissolution, was by the house deliberately kept waiting outside the locked door until its work was done and the call sent forth for a general congress. The short session, which thus ended summarily<sup>4</sup> on June 17, had sufficed for the passage of a few acts of ordinary legislation,<sup>5</sup> but was

<sup>1</sup> Samuel Adams to Silas Deane, Boston, May 31, 1774: "Our Assembly was unexpectedly adjourned on Saturday last till the seventh of June, then to meet at Salem. By this means I am prevented mentioning a Congress to the members. I wish your Assembly could find it convenient to sit a fortnight longer, that we might if possible act in Concert. This however is a sudden Thought." *Adams Papers*, Bancroft Collection.

<sup>2</sup> The resolutions of the house of June 8 against the pretended necessity of moving the General Court to Salem, and the address of the house to the governor of June 9 on the same subject, are in *Boston Gazette*, no. 1000, June 13, 1774.

<sup>3</sup> May 31, 1774, 4 *American Archives*, I., 369.

<sup>4</sup> Cf. John Adams, Falmouth, July 5, 1774, to Abigail Adams: "James Sullivan at dinner told us a story or two. One member of the General Court, he said, as they came down stairs after their dissolution at Salem said to him, 'Though we are killed, we died scrabbling, did not we?'

"This is not very witty, I think.

"Another story was of a piece of wit of brother Porter, of Salem. He came upon the floor and asked a member, 'What state are you in now?' The member answered, 'In a state of nature.' 'Aye,' says Porter, 'and you will be damned before you will get into a state of grace?'" *Familiar Letters* of John Adams, 12.

<sup>5</sup> The Governor on June 17 signed eight acts. A list of the titles is in the *Massachusetts Spy*, no. 177, June 23, 1774. The acts are published in *Acts and Resolves . . . of the Province of Massachusetts*, V., 387-412. Three of these acts were printed on pp. 517-521 of "Temporary Acts and Laws of . . . Massachusetts Bay . . . Boston; . . . Green and Russell . . . 1763." Of this volume pp. 1-179 are for the years 1736-1763; pp. 180-528 carry it into 1774, the latter part, although printed subsequently, being paged consecutively. A copy is in the Library of the Historical Society of Pennsylvania.

chiefly important from the fact that its utterances made clearer than ever before the opposition between the legislative and the executive branches of the government. The address of the council to the governor even attributed to the two immediate predecessors of Gage the tendency to disunion and the "present distressed state" of Massachusetts. The ground taken by the council was maintained in a manner far too outspoken for the governor. He interrupted the reading of the address, and replied that he could not receive it, as it was "an Insult upon his Majesty and the Lords of his Privy-Council, and an Affront to myself."<sup>1</sup> That the lower house of the legislature was equally firm in opposition is shown by the small size of the minority on June 17;<sup>2</sup> and an indication of the popular spirit appeared in the unsought prominence attained by those few who opposed the first step toward the organization of a national governing body and a national resistance. The popular elements of the government were now a unit, and even if their leaders were "sensible, that . . . their conduct must be styled *rebellion*,"<sup>3</sup> they realized the necessities of the case and acted accordingly. "Their transactions might have been legally styled

<sup>1</sup> The address and the reply are printed in *Boston Gazette*, no. 1001, June 20, 1774.

The records of the council, June 7-June 17, are in *Mass. Archives*, Court Records; 30: 272-302. The address was adopted June 9, 13 members being present; the governor's reply was received June 14. Their last act, on June 17, after concurring with the lower house in appropriating £500 for the expenses of the Continental Congress delegation, was to send down a bill changing a man's name.

<sup>2</sup> The house had 129 members at Salem; the statement is made in *Boston Gazette*, no. 1001, June 20, 1774, and in *New York Journal*, no. 1643. A list of members elected is in *Boston Gazette*, no. 998, May 30, 1774. The minority on the resolves of June 17 is given as twelve, in *New York Journal*, no. 1643, where eleven are named. *Boston Gazette*, no. 1001, June 20, 1774, printed an identical list of eleven, and indicated uncertainty as to the position of one member.

<sup>3</sup> Warren, *History of the American Revolution*, I., 138.

*treasonable*, but loyalty had lost its influence, and power its terrors."<sup>1</sup> Its own efforts brought the sudden dissolution of the legislature; the session furthered the contest;<sup>2</sup> and still more preparation for the crisis was now possible in the few weeks preceding the nomination of the mandamus council and the issue of writs for the election of a new representative body to sit with this new upper house. Those intervening weeks were marked with significant and effective activity; the signs of a crisis, whether of a constitutional or a political nature, were many and were such as to make it plain that an end must soon be reached. With much meaning, in those weeks, did John Adams write to James Warren: "Politics are an ordeal path among red-hot ploughshares."<sup>3</sup>

The involved question of the legality of Gage's withdrawal of the writs of election was to be ended, if not decided, early in October, 1774. The nature of the coming conclusion had been already indicated in the action of the towns. They now had definite aims and a definite plan of action; to serve their purpose and lend respectability to their claims they advanced arguments of a constitutional character, and based their claims upon a painfully strict interpretation of the language of the charter. In reality, however, constitutional argument was fast giving place to political conflict; the colonists now had reached the point from which there must be movement either forward or backward; public feeling left no question as to the direction which the movement would take; and there was as little doubt that the advance would necessarily involve a complete disregard of

<sup>1</sup> Warren, *History of the American Revolution*, I., 136.

<sup>2</sup> Even from New York Alex. McDougall, June 26, 1774, wrote to Samuel Adams with reference to the votes of June 17: "The manner of their doing the last is very judicious and agreeable to me, . . . . The time is now come . . . when it would be proper to push our Committee, which will be done to-morrow evening." *Adams Papers*, Bancroft Collection.

<sup>3</sup> June 25, 1774, *Works of John Adams*, I., 149; IX., 339.

constitutional quibbles. Thus, early in September, Thomas Young expressed a common assurance when he wrote to Samuel Adams that "the Laws of God, of Nature and Nations oblige us to cast about for safety."<sup>1</sup> Turning from theory to the tangible problem at hand, he wrote in the same letter: "By all our advices from the westward the body of the people are for resuming the old charter, and organizing a government immediately." Elections of representatives were being held by the various towns, but the elections were accompanied by such votes and resolutions as to make it plain that the continued existence of royal legislative power was decidedly problematical. That such was the prevalent belief is made reasonably clear in a letter written in the first week of September by a prominent Connecticut man. Referring to the many town-meetings in Massachusetts he writes: "However, you shall have my conjecture, to wit: the Act of Parliament they will say has dissolved the Compact; that they are in a State of Nature; and have a right to make a new Constitution; and on that principle, adopt the Province first Charter and make choice of Gov<sup>r</sup>, Dep. Gov<sup>r</sup>, Secretary, and other officers necessary, and endeavor to establish a Constitution, in defence of which they will spend all their treasure and blood."<sup>2</sup> Thus, whatever might be done, the elections to the new house were a form and little more; it was a necessary step in order to put the governor ostensibly in the wrong; yet in that step the unanimity of the people was revealed.

The attitude of the towns was defined by the elaborate instructions given to the representatives who were now being elected in accordance with the writ of September 1. The

<sup>1</sup> Thomas Young, Boston, Sept. 4, 1774, to Samuel Adams, Philadelphia. *Adams Papers*, Bancroft Collection.

<sup>2</sup> Col. Gurdon Saltonstall, Wethersfield, Conn., Sept. 5, 1774, to Silas Deane. *Collections Connecticut Historical Society*, II., 150, 151.

definition of their attitude and the indications given by many acts of the colonists seem to have convinced Gage of the folly of convening the legislative body. Its mere assembling would precipitate a decision of strength on the question of the council. His mandamus council having been reduced, by forced resignations, to less than a quorum, a complete General Court was an apparent impossibility. Even a compromise on the composition of the next body to be termed a General Court was equally impossible, inasmuch as the governor could not, with any regard to his instructions or to the consistency of his position, recognize as a council the men chosen by the General Court in the preceding May.<sup>1</sup> Thus it could not be foreseen what developments would attend a meeting of the General Court; an abundance of contingencies merely confirmed the executive in a step which transactions around him already seemed to render imperative. Accordingly, on September 28, Gage issued a proclamation<sup>2</sup> annulling the earlier issue of writs of election. Acting upon a liberal interpretation of his powers, by this act he simply exercised his constitutional right incident to the clause in the charter which gave the governor "full power and Authority from time to time as he shall Judge necessary to adjourne Prorogue and dissolve all Great and Generall Courts or Assemblyes met and convened as aforesaid."<sup>3</sup>

<sup>1</sup> Cf. Postscript of letter of conference at Holliston, Sept. 26, 1774, transmitted to Boston committee by Samuel Locke, of Sherburne: "You will allow me to Suggest a wish Gent<sup>n</sup> that Some Hint might be given publickly with respect to y<sup>e</sup> meeting of our old Constitutional Counsil on y<sup>e</sup> 5<sup>th</sup> of next. to claim their Seats and offer their Service—at least to y<sup>e</sup> House if y<sup>e</sup> Gov<sup>r</sup> will not be advised by them." *Revolutionary Corresp.*, III., 673, Bancroft Collection.

<sup>2</sup> The text is given in pp. 3, 4, *Journal of the Provincial Congress*. Reference is therein made to "the many tumults and disorders which have since [Sept. 1] taken place, the extraordinary resolves which have been passed in many of the counties, the instructions given by the town of Boston, and some other towns, to their representatives, and the present disordered and unhappy state of the province," as rendering the action expedient.

<sup>3</sup> *Acts and Resolves of the Province of Mass.*, I., 12.

Under these circumstances there were no men in the colony legally entitled to sit in a General Court. Opposite ground was held by the colonists. By them it was claimed that the issue of writs of election, at the order of the governor, could take place only after the governor had determined that a condition existed which made such issue essential or proper. When such a condition was declared to exist, and when, accordingly, the governor had taken such preliminary action, a series of processes was begun and the completion of the series was essential and even required. Thus, for no reason could the issue of writs of election fail to be immediately followed by all the processes of an election and by a session of the General Court. As indicated, the executive acted upon an opposite theory; and he further maintained his view by his course of action. His withdrawal of the writs of election was appropriately followed by his omission to recognize or meet with the men chosen by the towns to serve as their representatives. Nevertheless, the ninety<sup>1</sup> representatives who gathered at Salem, October 5, considered themselves a constitutional body, and as such awaited with "cautious courtesy" the appearance of the executive, or of his representative, whose presence was essential to the organization of a General Court. A provisional organization<sup>2</sup> was effected by the men thus gathered, and a committee was appointed to consider the governor's recent proclamation. The executive failing to appear, the men who thought themselves a royal assembly brought matters to an issue by the adoption, on October 7, of a brief series of par-

<sup>1</sup> I find this number stated in *Mass. Spy*, no. 193, Oct. 13, 1774.

The same statement is made in *Journals of Each Provincial Congress of Massachusetts*, p. 4, where reference is made to Gordon, *History of the American Revolution*, I., 280, and where a general reference, without citations, is made to the *Essex Gazette*, *Mass. Spy*, *Boston Evening Post*, and *Boston Gazette*.

<sup>2</sup> John Hancock was chosen chairman, and Benjamin Lincoln, clerk. *Journals*, p. 4.

tisan resolves. Excessive stress was laid in these upon the words of the charter which oblige the governor to "convene, 'upon every last Wednesday in the month of May, every year forever, and at such other times as he shall think fit, and appoint a great and general court.'" As they further held that the governor's power to adjourn, prorogue and dissolve the General Court could not be exercised until after a General Court, once called, had "met and convened,"<sup>1</sup> they asserted that Gage's action of September 28 was "against the express words, as well as true sense and meaning of the charter and unconstitutional;" and that it was "unjust, and disrespectful to the province. . . ."<sup>2</sup> They considered that "his representations of the province as being in a tumultuous and disordered state, are reflections the inhabitants have by no means merited; and, therefore, that they are highly injurious and unkind."<sup>3</sup> As the pretended cause of the proclamation of September 28 had existed for some time, the delay of such proclamation caused unnecessary expense

<sup>1</sup> In this connection should be noticed the procedure in 1755. The Assembly stood prorogued to September 24, but news from Crown Point caused the Lieutenant Governor and Council to think an Assembly essential; and it was called to meet September 5. In the short session four acts were passed, for levying troops for Crown Point, supplying the treasury with £16,000, punishing deserters, and assessing a tax of £18,000. Doubts were expressed as to the legality of these acts, and accordingly the General Court in the session beginning September 24 confirmed the acts of the earlier session. *Acts and Resolves of the Province of Mass.*, III., 882. For this there was no precedent in Massachusetts, and reference was made to the session of Parliament of July 25, 1667. Cf. *Ibid.*, III., 950.

<sup>2</sup> *Journal of the Provincial Congress*, 5.

<sup>3</sup> *Ibid.*, 6.

Cf. Samuel Adams, Philadelphia, September, 1774: "If the only constitutional council, chosen last May, have honesty and courage enough to meet with the representatives chosen by the people by virtue of the last writ, and jointly proceed to the public business, would it not bring the governor to such an explicit conduct as either to restore the general assembly, or give the two Houses a fair occasion to declare the chair vacant?" Frothingham, *Life of Joseph Warren*, 377.

and trouble to those elected, and should thus be considered as discourteous to the province. Some of the causes "assigned . . . for this unconstitutional and wanton prevention of the general court, have, in all good governments, been considered among the greatest reasons for convening a parliament or assembly."

These men now voted to "resolve themselves into a Provincial Congress, to be joined by such other persons as have been or shall be chosen for that purpose, to take into consideration the dangerous and alarming situation of public affairs in this province, and to consult and determine on such measures as they shall judge will tend to promote the true interest of his majesty, and the peace, welfare and prosperity of the province."<sup>1</sup> Thus ended the last attempt in Massachusetts to maintain the royal legislature; then was taken an important step in the progress of revolution.<sup>2</sup> Then, indeed, were the people "compelled to turn their thoughts and attention to other methods of preventing the impending destruction."<sup>3</sup>

### § 5. *Closing of the Royal Courts*

The enforced cessation of activity on the part of the royal legislature and the rapid neutralizing of the power of the royal executive comprised only a portion of the transitional events at this period. During the same months definite expression was given not only to the popular hatred of the

<sup>1</sup> *Journal of the Provincial Congress*, 6.

<sup>2</sup> Lieut. Governor Hutchinson's *History of Massachusetts* ends thus: "The people, by their own authority, formed a legislative body; and from that time all pacifick measures for restoring their former dependence upon the supreme authority of the British dominions, were to no purpose." *Op. cit.*, III., 460. Of the first volume of this work Ezra Stiles wrote: "It is my opinion that this History contributed more than anything else to reviving the ancestral spirit of Liberty in New England on this occasion." [1765.] *Papers of Ezra Stiles*, 41, Bancroft Collection.

<sup>3</sup> *New York Journal*, no. 1672, Jan. 19, 1775.

methods of royalty, but also to the local opposition to the jurisdiction of the newly constituted royal courts, and to the feelings aroused in the earlier contest over the impeachment of Chief Justice Oliver. The bitter and widespread discontent now made more severe the tension between royalty and democracy, and sounded the key-note of the policy of vigor and even of violence that was soon to occasion the sudden collapse of a judicial system which for some months had been without foundation. Thus, even of the year 1773, it could be written: "There was not a justice of the peace, sheriff, constable, or peace officer in the province, who would venture to take cognizance of any breach of law, against the general bent of the people."<sup>1</sup> Such a strong characterization, indeed, could Governor Hutchinson reiterate with the added emphasis of intervening history when he wrote concerning the early months of 1774: "The course of law was now wholly stopped . . . ."<sup>2</sup> In the early spring of that same year "even one of the Assemblymen, a Col. Gardner, who was afterwards killed at the Battle of Bunker's Hill, declared in the General Assembly, that he himself would drag the Chief Justice from the Bench, if he should sit upon it."<sup>3</sup> And not untruly, then, could the Berkshire loyalists in the following August join with their congratulations to Gage on his appointment the terse statement: "The fences of law are broken down;"<sup>4</sup> for the movement was then well under way which was to overthrow the courts of the king and prepare the ground for the estab-

<sup>1</sup> Hutchinson, *History of Massachusetts*, III., 437.

<sup>2</sup> *Ibid.*, III., 454.

<sup>3</sup> From a MS. entitled "The Origin and Progress of the American Rebellion to the Year 1776. In a Letter to a Friend," reprinted in part in *Diary and Letters of Thomas Hutchinson*, I., 141-147; the quotation here given is from p. 145.

<sup>4</sup> Dated August 10, 1774; 4 *Collections of Massachusetts Historical Society*, X., 715.

lishment of a new judicial system, comprising old forms, to be sure, but resting upon the recognition of a shifting of sovereignty.

The effort of parliament to effect a transfer from town-meetings to crown officials of certain powers relative to the choice of jurors was met by a distinct response from a united people.<sup>1</sup> For them the charter of 1691 and the statutes of Massachusetts were ample; in theory the action of parliament was beyond the colonial conception of propriety; in practice the people must retain their honored right of electing jurymen. And as the popular program had been to ignore the constitutional existence of a new council appointed by the crown, so in this connection as well the king's parliament was considered incompetent to act, and its action upon such contested ground was treated as of no effect. The administrative situation on August 20 was described by Benjamin Kent in his letter to Samuel Adams, as follows: "Our Constables have precepts deliver'd them to make return to the Sheriff of all persons liable to serve on juries,<sup>2</sup> according to the late Act of Parliament—but they are unanimously determined not to pay any regard to them."<sup>3</sup> Nevertheless, an effort at ordinary procedure was made, although now every step was marked by an irregularity that foreboded no good. At Boston,<sup>4</sup> ten days after Kent was writing to

<sup>1</sup> For an expression even in the preceding year, *cf.* Andover, instructions to representative, June 1, 1773: "We already see the Subject depriv'd of his essential Right to a Tryal by Juries: his House & Business expos'd to a Parcel of low-liv'd officers under the absolute Direction of the Crown. and our civil Magistrates dependant on the same for their support: We have seen a Native of this Province invested with a Power resembling that—that of a Spanish Inquisitor." *Revolutionary Corresp.*, I., 125, Bancroft Collection.

<sup>2</sup> *Cf.* John Adams, *Familiar Letters*, 29, 30.

<sup>3</sup> *Adams Papers*, Bancroft Collection.

<sup>4</sup> The conference of delegates from four counties which was held in Boston, August 26 and 27, adopted a committee report of which a portion drawn up but not accepted was as follows: "That every officer belonging to y<sup>e</sup> Courts y<sup>e</sup>

Adams, "the Superior Court met, when the recorded Traitor had the impudence to take his seat as Chief Justice, but to his great mortification, met with that scorn & Contempt he so justly deserves. The Grand Jurors & Petit Jurors with a Resolution & firmness becoming free born Americans, nobly refused to take the Oaths;"<sup>1</sup> and on the next day the court proceeded to business "as is usually transacted, without juries."<sup>2</sup> In New England, however, by statute and by popular custom, the elective jury was a vital and cherished element of the judicial system. That it was actually such the people of Boston, fortunately in a temperate manner, soon made manifest. The same week that the regular business of the court at Boston was interrupted, a certain "Amicus" wrote to Samuel Adams: "The judges have informed the governor that the execution of their office is at an end."<sup>3</sup>

While thus in Boston the courts were made to yield to the "bent" of the popular will in a manner not friendly at least, even if not insurrectionary, throughout the rest of the com-

People in either County of this Province will conduct properly, by dispersing y<sup>e</sup> Judges when met for y<sup>e</sup> purpose of Judicature, in every Way that shall not be productive of Carnage & Bloodshed." There is also a variation of this form. *Revolutionary Corresp.*, III., 69, Bancroft Collection.

<sup>1</sup> Letter of Nath'l Noyes, Boston, August 30, 1774; *New England Historical and Genealogical Register*, April, 1889, xliii, 146, 147. The reasons formed and offered by these jurymen are printed in Niles, *Principles and Acts*, 319, 320.

*Cf.* Paul Revere to John Lamb, September 4, 1774. Frothingham, *Life of Warren*, 359. Goss, *Life of Paul Revere*, I., 150. *Cf.* 4 *American Archives*, I., 748, 749.

On the same day, September 4, Joseph Warren wrote to Samuel Adams: "If we should allow the county courts to sit one term upon the new establishment, what confusion, what dissensions, must take place!" Frothingham, *Life of Warren*, 357.

<sup>2</sup> *Boston Gazette*, no. 1012, supplement, September 5, 1774.

<sup>3</sup> Dated September 5, 1774; this letter also tells of the removal of the gunpowder from the wind-mill and of the meeting of 3000 men at Cambridge on the morning thereafter. *Adams Papers*, Bancroft Collection.

monwealth the same end was attained usually by methods more summary and by means far less justifiable. Thus in recounting the events of August, a single newspaper article<sup>1</sup> cited the enforced withdrawal of the attorney-general from Cambridge to Boston; the extortion from Sheriff Phips, of Middlesex county, of a promise to serve no more processes; the interruption or prevention of judicial proceedings at Springfield,<sup>2</sup> at Plymouth,<sup>3</sup> at Taunton,<sup>4</sup> and in Berkshire county;<sup>5</sup> and furthermore the episode at Worces-

<sup>1</sup> "Plain English to the Provincial Congress." Reprinted from the *Boston Post* in *Rivington's Gazette: or the Connecticut, Hudson's River, New Jersey, and Quebec Weekly Advertiser*, no. 99, March 9, 1775. This appeared under date of Feb. 20, in the *Mass. Gazette* (Draper), no. 3726, February 22, 1775.

<sup>2</sup> On August 26, delegates of 25 towns and districts in Hampshire county, and of plantation "number five," met at Hadley and named a committee of five to present the statement then drawn up for the signatures of the judges at Springfield on the last Tuesday in the month. A statement was presented and signed in a modified form; the people voted that the reply was unsatisfactory, that the court should not sit, and that the committee should inform the judges of these two votes "and request of them a speedy answer, Whether they were determined to sit contrary to the sense of this assembly, which passed in the affirmative. Accordingly the said committee waited on the said justices informing them of the votes above mentioned and soon recd. the following answer: That they would not sit contrary to the minds of the people. And further saith not." This complete account, dated August 31, 1774, signed by the five men of the committee mentioned, was sent to the Boston committee. *Revolutionary Corresp.*, III., 699-701, Bancroft Collection. Cf. Smith, *History of Pittsfield*, 197.

<sup>3</sup> "On Tuesday the fourth instant, there was a great confluence of people in this town, to prevent the sitting of the court, in imitation of the example of other counties, it being expedient and necessary at this critical conjuncture, to maintain a similarity of sentiment, and uniformity of action. The affairs, respecting the declaration of the justices, recantation of addressing, &c. were managed by the delegates of the county conventions." Plymouth letter in *Mass. Spy*, no. 195, October 27, 1774.

<sup>4</sup> Cf. 4 *American Archives*, I., 732.

<sup>5</sup> *Ibid.*, I., 724.

"We hear from Great Barrington, in the government of Massachusetts Bay, that last week, . . . a great number of people assembled, supposed to be 1500—would by no means permit the court to proceed, and at last they were obliged to retire without doing any business." *New York Journal*, no. 1651, August 25, 1774. Cf. quotation from *Mass. Gazette and Newsletter* in Smith, *History of Pittsfield*, 196.

ter,<sup>1</sup> where a presumably respectable mob of 5,000 stopped the work of the judges of the court of common pleas and forced the judges, lawyers, and sheriff, with hats off, to walk between double files and disavow not less than thirty times the holding of courts under the new acts of parliament. To this record of the public acts of the time the same article added more than a score of instances of the use of force, or of equally effective threats, against royal officials either in mandamus council or in the judicial department. And thus the judiciary of Berkshire, of Worcester, of Hampshire, of Middlesex,<sup>2</sup> and of other counties, drifted toward the goal of dissolution which the courts of Suffolk had already reached. So, too, the provincial press aimed to bring about the "similarity of sentiment, and uniformity of action" suggested by the men of Plymouth. The movement, plainly, was not that of a single town or county, or of a group of such, but of a politically united population;<sup>3</sup> it was at the same time a radical movement and one summarily effective in overturning

<sup>1</sup> Cf. *Boston Gazette*, no. 1013, September 12, 1774.

E.g., The Worcester County Convention on August 31 "Resolved, That it is the indispensable duty of the inhabitants of this county, by the best ways and means, to prevent the sitting of the respective courts under such regulations as are set forth in a late act of parliament, entitled, an act for regulating the civil government of the Massachusetts Bay." *Journal of the Provincial Congress*, 632. The Worcester County Convention on September 6, 1774, "Voted, as the opinion of this convention, that the court should not sit on any terms." *Ibid.*, 635.

<sup>2</sup> As to the closing of the court at Concord, September 13, 1774, see Shattuck, *History of Concord*, 88.

<sup>3</sup> Gov. Gage wrote to Lord Dartmouth, September 2, 1774: "Civil Government is near its end; the Courts of justice expiring one after another."—4 American Archives, I., 767-769. Also in *Parliamentary History*, XVIII., 96.

Cf. Pittsfield committee, July 25, 1774, to Boston committee: "Our Court being the first in the province after the taking place of those Acts we ask your Advice and Opinion, & desire your speedy Sence in this matter of so great Moment, that we may act in concert with the whole province as much as possible. We hope you'll not fail to transmit to us your Opinion touching this matter before the sitting of sd. Court. We expect to get it adjourned unless we should hear from you." *Revolutionary Corresp.*, III., 607, 608, Bancroft Collection.

the existing judicial system and in preparing the ground for the establishment of a new system on an entirely different basis.<sup>1</sup> And while of the period of judicial hiatus it could be said that then "were the bands of society relaxed, law set at defiance, and government unhinged throughout the province,"<sup>2</sup> nevertheless the conservatism of the people and their "similarity of sentiment" assured to their "uniformity of action" a salutary character, and imparted to such action even a type of positive efficiency.

Concerning the impending interim in judicial matters, John Adams, on September 26, wrote from Philadelphia: "It Seems to be the general opinion here that it is practicable for Us, in the Massachusetts to live wholly without a Legislature and Courts of Justice as long as will be necessary to obtain Relief. If it is practicable, the general Opinion is, that We ought to bear it."<sup>3</sup> A fortnight later the Continental Congress resolved "That the Congress recommend to the inhabitants of the Colony of the Massachusetts Bay, to submit to a suspension of the administration of justice, where it cannot be procured in a legal and peaceable manner under the rules of their present charter, and the laws of the colony founded thereon."<sup>4</sup> And it is a striking feature of the transitional period, especially during the critical beginning, that the even temper of the people and their unselfish ambition to mitigate the possible evils of impending anarchy could so completely and so effectively, for the time being, remove the necessity for established courts of law.<sup>5</sup> Public

<sup>1</sup> Cf. *Boston Gazette*, Sept. 18, 1775; Lincoln, *History of Worcester*, 75.

<sup>2</sup> Warren, *History of the American Revolution*, . . . Boston, 1805, I., 145.

<sup>3</sup> To Jos. Palmer of Germantown; *New England Historical and Genealogical Register*, (July, 1876) XXX., 306. *Works of John Adams*, I., 154, 155. But cf. Adams to Tudor, Sept. 29, 1774; *Ibid.*, IX., 347; and cf. Adams to Burgh, Dec. 28, 1774; *Ibid.*, IX., 351.

<sup>4</sup> Resolve of October 10, 1774; 4 *American Archives*, I., 908, 909.

<sup>5</sup> The committee of Gloucester, August 17, 1774, to the Boston committee:

opinion, and the high ideals of the citizens, prevented confusion on the dissolution of the courts. The effects of such dissolution were patent for considerably more than a year, during which time, as Washburn states, "the defect of courts of justice was in some places supplied by the establishment of local tribunals for the trial of causes, but more by the spontaneous action of the people in restraining crime and enforcing justice."<sup>1</sup> Instances of such provisional courts appear early. Thus, on September 5, 1774, the town of South Brimfield "voted to choose twelve men as a court of justice and honour, to judge and determine all controversies that may hereafter arise in S<sup>d</sup> District." In the same month Malden chose a similar board of twelve, and on December 6 the town of Attleborough elected four judges for a superior court and seven judges for an inferior court in the town.<sup>2</sup> A board such as that in Malden and in South Brimfield was, on January 5, 1775, chosen by the town of Billerica, although in this last instance less power was given to the newly created court, and provision was made for a reference of matters to the town for final decision.<sup>3</sup> But all such were

"A County Congress is just now propos'd." The avoidance of law suits "may be promoted by such a Congress which would be a further Proof of our Unanimity so much dreaded by our insolent Oppressors." *Revolutionary Corresp.*, III., 336, Bancroft Collection.

<sup>1</sup> Washburn, *Judicial History of Massachusetts*, 165.

<sup>2</sup> *Lincoln Papers*. In the case of Malden a quorum of seven was established. As to Attleborough, cf. Washburn, *Judicial History of Massachusetts*, 165; Daggett, *History of Attleborough*, 121, 122.

As to the erection of a local judiciary in Pittsfield, cf. Smith, *History of Pittsfield*, 381-384.

<sup>3</sup> Certain cases also were tried before the local committees. In Hampshire county, an appeal from the decision of one town committee to another local committee within the county was allowed; appeals were taken in 1776 to the Northampton committee from the decisions of the Amherst committee by Wm. Boltwood, Isaac Goodale, Ephraim Kellogg, and other residents of Amherst. *Hawley Papers*, II., Bancroft Collection.

A further kind of procedure is shown by the letter of April 19, 1776, sent by

local efforts to supply what must be formed only by the commonwealth itself. And yet they were a clear recognition of the needs of the time, and of the fact that the courts of the king had in Massachusetts adjourned forever. Thereafter the basis of such organs of government was to be essentially different; the state itself had been altered, and the judicial system, in substance and theory if not in all points of superficial procedure, must, with the other organs of the state, recognize and coincide with the alteration. The transition is described bluntly but with truth by the following passage inserted in the records of the superior court: "N. B.—The Superior Court did not sit in the county of Middlesex in October, 1774, by reason of the difficulty of the times, and there was no term of the said court in that county until October, 1776. And the continued actions are carried forward by a special order of the general court."<sup>1</sup> With this revived general court,<sup>2</sup> under the "resumed" charter, the restoration was begun, which was to be completed under the new constitution.

the Amherst committee to Hatfield, Northampton, and Sunderland. To Northampton it was written: "Gentelemen hereby is Presented the Request of the Committee of Amherst that you would oblige your Brethren with the assistance of three of your Committee of Correspondence in the Important Trial of the Revd Mr. David Parsons upon a Complaint of his being unfrindly to the intrests of the Continent." The trial was appointed for April 24, at Elisha Ingram's house, Amherst, and the Northampton committee appointed a delegation to attend. *Hawley Papers*, II., Bancroft Collection.

<sup>1</sup> *Quincy's Reports*, I., Mass., 340. The Superior Court was revived in Essex County, June 28, 1776, Worcester County, September 25, 1776, and Suffolk County, August 28, 1778. Washburn, *Judicial History of Massachusetts*, 166. The Superior Court of Essex County at Ipswich on the third Tuesday in June, 1776, is given as the first court held under the new government. *Quincy's Reports*, 340.

<sup>2</sup> L. Lincoln, Worcester, Nov. 7, 1775, to Joseph Clark, Northampton: "Our Courts are about forming, . . . ." *Hawley Papers*, II., Bancroft Collection.

E. g., John Adams, *Familiar Letters*, 160, 171, 227. Cf. Whitney, *History of Worcester county*, 16; Lincoln, *History of Worcester*, 88; *Works of John Adams*, II., 332.

## CHAPTER IV

### EXTRA-CONSTITUTIONAL BODIES

IN "The American Querist" the seventy-sixth question was: "Whether the colonies, in a great measure, have not, for ten years past, been under an iniquitous and tyrannical government, namely, the government of unprincipled  *mobs*; and whether experience has not yet convinced us, that this mode of governing a country is most detestable?"<sup>1</sup> This small pamphlet was written anonymously by the president of King's College, was published by the tory Rivington, and was burned by the "sons of liberty." It was distinctly, thus, a partisan statement, and yet by the exaggeration of the enormity he opposes, the author yields an unwilling confession of the political effectiveness of this new "mobocratick"<sup>2</sup> power. What by one party was considered an abuse of power, and as such thoroughly reprehensible, was by the

<sup>1</sup> [Cooper.] *The American Querist*, 24, 25. A further characterization, of similar tenor, appeared in a speech said to have been delivered in the New York assembly by "I——c W——s, Esq.,," who referred to committees, associations, and congresses: "They have already driven this Colony to the brink of a precipice; some of our sister colonies (I speak it with deepest concern) have already taken the desperate plunge; and unless the clemency of Great Britain shall work a miracle in their favour, I know not how they will escape perdition." *Rivington's Gazette*, no. 103, April 6, 1775, Cf. *Short Advice to the Counties of New York*, 11. Cf. "A Freeman," in the *Salem Gazette*, vol. I., no. 6, August 5, 1774. Cf. "McFingal," canto III. Trumbull, *Poetical Works*, I., 95, 96.

<sup>2</sup> Referring to the continent of North America: "There mobocratick majesty has usurped a power unknown to European and Asiatick despots!—A General Congress, Provincial Congresses, Committees of Safety, Committees of Commerce, and *Stab*-committees of select Men, all are law-makers and law-breakers; . . . . James Stewart, *Total Refutation of Dr. Price*, 3, 4.

opposing party held to be a proper exercise of power, and in all respects justifiable.<sup>1</sup> Aside from the relative merits of the case, it was evident that the rise of new forms of political activity and the development of new organs of political expression was a striking phenomenon during the transition from the province to the commonwealth, and immediately preceding that series of events. It was significant, as well, although chiefly so from the political point of view. In the history of constitutional development minor importance attaches to the various extra-constitutional forms or bodies which appear; but from this statement the Provincial Congress may be excepted. The work of that body, however, was largely facilitated and its practical authority strengthened by the effective manner in which the population was politically organized. The deliberate, sure, and effective action of the smaller political divisions, at a time presumably of utter demoralization, attests the influence and the importance of those less prominent organizations which served to control the population and to give it political unity and efficiency. Their forms and their detail of procedure may, in this connection, be relatively unimportant, but the general effect and even the existence of such are not to be disregarded. By the maintenance of them a direct connection was secured between each Provincial Congress and every individual in the population which it aimed to direct. It was made possible that the resolutions of the provincial body should be brought to every inhabitant with all the force of law. Every person

<sup>1</sup> Many formal protests were made against the actions of the committees. Thus a protest from men of Worcester characterized them as "being creatures of modern invention," "having no legal foundation," and spoke of "their past dark and pernicious proceedings: . . . ." *Boston News Letter*, June 30, 1774; *Mass. Gazette*, July 4, 1774; *Worcester Town Records*, 230-233. This protest, which was called a "Peice of Low Cunning," occasioned a special meeting of the town, on August 22 and 24, when the committees were strongly endorsed. *Worcester Town Records*, 236-239. Cf. *Boston Town Records*, XVIII, 178.

was made to realize that there was in the province a body exercising authority which, in his eyes at least, was tangible and effective. It was made such largely by the co-operation of county committees and town committees, whether of correspondence, inspection, safety, or regulation, and by the less active assistance of such bodies as county conferences and conventions.

The attainment by the revolution of its "breath of life" has been attributed to the action of Samuel Adams in the Boston town-meeting of November 2, 1772.<sup>1</sup> If the motion which led to the creation of the Boston committee of correspondence could have had even approximately the effect on continental politics thus rhetorically indicated, much more decisive must have been its influence upon Massachusetts. To be sure, the step which occasioned the vigorous statement of the inherent rights of the colonists "as men and Christians and as subjects; . . ."<sup>2</sup> must have induced a profound revival of the political consciousness of the people. Such an awakening was essential to success, and its occasion was significant. The step which caused such general appreciation of natural rights was, however, even more important, in that it was promptly followed by the choice in many towns of a committee of correspondence. The adoption of the Boston recommendation was so general that the range of influence of these committees may not improperly be stated as comprising the whole province.<sup>3</sup> In each case the more regular and more important correspondence was

<sup>1</sup> *Revolutionary Corresp.*, Bancroft Collection, I., contains an original printed notification, dated Nov. 16, of the meeting of Nov. 20, and a manuscript draft, attested by Wm. Cooper, of the famous report adopted on the latter date.

<sup>2</sup> See Sabin, *Bibliotheca Americana*, no. 6568. Cf. Wells, *Life of Samuel Adams*, I., 502-507.

<sup>3</sup> However, cf. action of Wilbraham, April 20, 1773, the preamble referring to the inaction of other towns, "Since the most Antient Towns in the Same County have lain still and done nothing." *Revolutionary Corresp.*, I., 987, Bancroft Collection.

that maintained by each town committee with the committee at Boston. All looked thither for advice and direction.<sup>1</sup> Thence came the assistance, the encouragement, and the suggestions that prepared the people for intelligent opposition; and thence came to all, as well, a most forcible exposition of their position, and insistence upon their rights and their duties. This "campaign of education" was one that made the population much more nearly harmonious in their political beliefs. The process that followed Samuel Adams' act of inspiration was such as to make the population a unit also for all purposes of political action;<sup>2</sup> and in this latter result lay the deeper significance. The people thus secured a central body whose word was given uniform respect and

<sup>1</sup> Rochester committee, October 26, 1773, to Boston committee of correspondence: "Our Eyes, Gentlemen, (under God) are unto you. Your local Situation, as well as some other Circumstances, gives you advantages above your Brethren in y<sup>e</sup> Country, both for obtaining & communicating Intelligence of y<sup>e</sup> various Movements of our Enemies, & of their plots & designs against us." *Revolutionary Corresp.*, Bancroft Collection, I., 777.

Committee of Abington, August 17, 1774, to the Boston committee: "and a Provincial Congress appears to us to be Expedient to be Immediately appointed in order that the Sense of the Several Towns may be known whether they will comply with the New Act of Parliament relative to Jurymen for our Executive Courts. However, we referr all those Things to your Wisdom to dictate . . ." *Revolutionary Corresp.*, III., 113, 114, Bancroft Collection.

<sup>2</sup> Wm. Cooper, for Boston Committee of Correspondence, to Newburyport Committee of Correspondence, January 1773, rough draft: "The notice you have been pleased to take of our endeavors to serve our country; the strong, sententious manner in which you have expressed your resolution to co-operate with us, for the redress of our intollerable Grievances add much to our encouragement. Thus connected with each other in sentiment, in common affection, in common interest and common danger, we must speedily convince those who conspire our ruin that so united we shall baffle all their machinations." *Revolutionary Corresp.*, Bancroft Collection, I., 667. Cf. *Ibid.*, I., 1017. Even the Colrain committee could write, August 8, 1774, to the Boston committee: "Nine tenths of the County of Hampshire: & Berkshire. will stand by you. even with Life & fortune." *Revolutionary Corresp.*, III., 263, Bancroft Collection. But the interception of letters in some cases delayed prompt co-operation. Cf. *Ibid.*, III., 161.

weight throughout the province; they secured as well in each town a body whose function it became to promote, vigorously if need be, uniformity in the rule of action suggested by the committee of the capital.<sup>1</sup>

As suggested, the local committee was at first one simply of correspondence. Its organization was the direct result of the action of the Boston meeting, which had deliberated in an atmosphere surcharged with excitement caused by the transactions concerning the tea. The directness of the appeal was so answered and the hazard of the political risks presented was met in such a manner, that a fair view of the situation need give scant allowance to the slight deviation from absolute unanimity throughout the population. At the same time, however, the step thus taken was justifiable not only from the point of view of policy, but also from that of legality. Each town, or district, in the regular meeting of its freemen possessed of town privileges, duly elected such a committee in the course of its ordinary procedure. By these, in each instance, might be sent to Boston information concerning military and administrative affairs, upon the degree of partisanship of the minority, upon the general political feeling in the town or district; and by them, as well, might be sent appeals for direction, information and assistance. The time was distinctly one of exigencies, and to provide for promptly and firmly meeting these nothing could serve better than such a number of small local committees, possessing ample knowledge of the provincial situation, acting upon practically identical lines of policy and with similar objects and methods, and, furthermore, so constituted and endorsed as to be able, and to feel free, to turn their energy to any line of legitimate political action which

<sup>1</sup> Cf. Joseph Warren, Boston, August 29, 1774, to S. Adams, Philadelphia: "I am constantly busied in helping forward the political Machines in all Parts of this Province." *Autograph Letters of Joseph Warren*, Bancroft Collection.

might be necessary. They might check the plans of the administration or restrain sympathizers with it among the minority of the population, or do whatever else seemed advisable for the furtherance of the plans and political welfare of the colonists.

While various disconnected efforts at co-operation within the province had been made earlier, the effort which resulted most successfully, and which was connected most closely with the transitional period, was naturally that made in the fall of 1772; so that from the end of that year it must be understood that the province maintained throughout its extent a local organization so constituted as to be always ready for prompt and effective action, so created as to attain the sanction of legality, and composed of men of such positive beliefs and capacity for direct action as to be always ready, for the common cause, to countenance, and even to promote, acts that were beyond the sphere of legality and that were plainly of a revolutionary character.

It was unavoidable that such local bodies, suddenly organized and as suddenly confronted with the serious task of the control of the minority, should be impelled to successive acts of questionable propriety. Intimidation was in their eyes wholly justifiable, and it therefore became, of necessity, very common. The committees, planned for distributing intelligence concerning the infraction and maintenance of "chartered rights," became organs of forcible political propagandism. The effect of their work often showed itself in injuries to person, violations of property, and infringements of the liberty of those who might in politics choose to differ with the party of "movement." The functions thus originally of correspondence and publication, became so expanded as to make the committee the virtually uncontrolled engine of a political party, created for the purpose of making that party supreme, and restrained from no acts which might assist toward that end.

As the revolution advanced, the activity of the executive committees became differentiated. While in some cases the same committee was empowered to undertake specified and distinct lines of action, in other cases there appeared an additional committee, characterized, for instance, as that of inspection, or of observation.<sup>1</sup> To the care of committees of the latter class was entrusted an extensive but ill-defined group of activities including all matters in any wise political, as well as personal conduct, trade relations, property rights, local security, public finance, the administrative method of local officials, and the conformity of the population to the recommendations of the county and provincial bodies of town delegates and of the continental body of provincial delegates. And whether these local committees directed their energy against "regulators," against "addressers," or against "non-jurors;" whether they ordered the disciplining of a royal sheriff, the closing of a royal court, or the expulsion of a stiff-necked loyalist; whether they accomplished the seizure of weapons held by the disaffected, or prompted the enlistment of volunteers, or promoted the gathering of supplies for the distressed Bostonians, their work commands attention not simply because the results of their efforts were so great, but especially because the creation, work, and customary attitude of such bodies made it possible that the people of the province, although renouncing the most important parts of their provincial government and acting virtually as revolutionists, should be able to confine themselves to what they considered perfect propriety of action, should be able to limit the acts of all within certain bounds,

<sup>1</sup> By virtue of the house resolution of February 13, 1776, a consolidation was effected, and each town thereafter was to choose annually a committee of correspondence, inspection, and safety. 4 *American Archives*, IV., 1447. An original print of this resolution, signed by the speaker, deputy secretary, and fifteen members of the council, is in *Hawley Papers*, II., Bancroft Collection. Cf. *Journal of House of Representatives*.

and should be able, furthermore, to enter upon the colonial revolt with an organization which for all purposes of practical politics—and other purposes then had little scope—was complete. When viewed after the lapse of twelve decades, the effect of the greater part of the local activity is seen to have been of a nature then not commonly understood. The “publication” of a political dissenter was an act in itself of ordinary occurrence, but the fact that the “publication” expressed the conviction and the opinion of a thoroughly organized population, was a fact of fundamental importance.

This organization of effort in the towns and districts, prompted both by the Provincial Congress and by the Continental Congress, did not reach its height until the end of 1774, or shortly thereafter; and by that time such work had been strongly supplemented by the action of county conferences or conventions, bodies outside the cognizance of the provincial law, and endeavoring, as did the smaller divisions, to enforce popular unity of action and belief, yet differing from those in taking a more positive course and in consciously aiming at the creation of new forms of government upon the premise of new statehood.

Many of the local bodies, which were largely of a provisional character, seem to have had no apparently close connection with the general transitional movement. Likewise, some of the unusual or extra-constitutional arrangements present in themselves no indication that they might have had any important effect upon the constitutional changes then in progress. Very much, thus, of the manifold political activity already suggested was important not so much for the rendering of positive assistance toward the ends in view, as for the prevention of much which would have made the attainment of those ends far more difficult. The preservation of local order, the protest against political usurpation, the development of a political unity in the population,

and many other steps, are important elements in the early stages of a revolution. Yet ultimate success demands that the significance and effect of these preliminary steps should be embodied in some positive creation that, in essence at least, shall be permanent. Such embodiment, as will be seen, was attempted by the Provincial Congress, and by the action of the towns preceding the formation of that larger body. Under the same category falls much of the activity of the county conventions during the crowded months of August and September, 1774. Other such bodies,<sup>1</sup> to be sure, had earlier taken action concerning commercial and political affairs, as non-consumption agreements and parliamentary taxation;<sup>2</sup> and thereafter such bodies were to take important action upon the state of the provincial currency, upon the demoralization of prices,<sup>3</sup> and, in certain instances, upon constitutional propositions;<sup>4</sup> but at no period did the activity of these bodies generally bear with such directness

<sup>1</sup>There were, as well, throughout the period, many conferences not strictly county conventions, called usually for some specific purpose. Thus, members of the committees of Boston, Roxbury, Dorchester, Watertown, Charlestown, Cambridge, "Mistick," Dedham, Milton, Malden, Braintree, Woburn, and Stow, met at Boston, September 27, 1774, and took action against supplying the British troops with labor and certain supplies. The resolutions were issued on a small hand-bill. *Revolutionary Corresp.*, III., 77-80, Bancroft Collection. Cf. *Ibid.*, III., 89, 105, 197.

<sup>2</sup>Thus, a convention of sixty delegates from towns in Berkshire county was held at Stockbridge, July 6, 1774. The proceedings are given in *Journal of the Provincial Congress*, 652-655. I find their proceedings and covenant printed also in *Boston Gazette*, no. 1006, July 25, 1774. The proceedings are also in *Revolutionary Corresp.*, III., 149-154, Bancroft Collection. Cf. Holland, *Western Massachusetts*, I., 206-208.

<sup>3</sup>Cf. Plymouth county convention, May 21, 1777. *Massachusetts Spy*, no. 321, June 27, 1777. An important series of congresses, both county and provincial, was held to take action on prices and the currency.

<sup>4</sup>Of such activity, Essex county furnishes an especially good example. Worcester county held a typical convention November 16, 1776, of which the proceedings are printed in 5 *American Archives*, III., 866, 867, and of which I find a record in *Massachusetts Spy*, no. 292, December 4, 1776.

upon the political needs and upon the organization of a provisional government as in the two months indicated.

Even as early as August 9 some fifty-two delegates, representing more than a score of towns and districts in Worcester county, met at the house of "Mrs. Mary Sternes, inn-holder," in the town of Worcester. An ambitious effort was made by them to express their sentiments to the Massachusetts men soon to attend the Continental Congress.<sup>1</sup> With reference to local needs, in view of the fact that "the acts, annihilating our once free constitution, are actually authenticated," they ask the towns still unrepresented to join in the effort to make the action of the convention truly representative of the entire county. They, furthermore, adopted unanimously, and for distribution, a series of resolutions, beginning, as was common at that period, with a profession of true allegiance to King George. This, however, was coupled with a denial of the jurisdiction of parliament over the colonies, and was followed by a condemnation of the effort of parliament to tax the colonists and to alter a provincial charter. The exclusive right to originate local law was claimed for the colonists; attention was given to the supporters of Gage; and it was the opinion of the delegates upon still another matter, that a non-consumption agreement, "if strictly adhered to, will greatly prevent extravagance, save our money, encourage our own manufactures, and reform our manners."<sup>2</sup>

<sup>1</sup> An address, "Humbly intimating as our opinion some few measures necessary to be adopted by the Congress, which address was delivered as those Gentlemen passed through this Town." *Revolutionary Corresp.*, III., 819, Bancroft Collection.

<sup>2</sup> *Journal of the Provincial Congress*, 630.

On August 19, 1774, Thomas Young, at Boston, wrote to Samuel Adams, at Philadelphia: "Worcester has had a County meeting and have sent us their resolves which I this day committed to Messrs. Fleet for publication. They wrote us to convene the Boston Committee on the 26th current, and invite Middlesex to meet us, at which time they proposed to attend by a Committee from Wor-

In the case of certain counties the convention was an event quite isolated in the history of the locality. In other counties the convention was something more than a single meeting or convention. There it attained varying degrees of permanence, although its existence could in no case be prolonged beyond the period of its utility. Thus, the Worcester convention already mentioned adjourned, not *sine die*, but to a stated time. Accordingly, on August 30, the county convention reassembled, comprising representatives of every town and district in the county,<sup>1</sup> the local delegations consisting, as before, mainly of the local committees of correspondence, of whom "there were present one hundred and thirty members, together with a number of delegates and gentlemen from several towns."<sup>2</sup> By this body, on August 31, vigorous resolutions were adopted tending to the disabling of the royal judiciary; an earnest plea was made for the maintenance of order, inasmuch as "the dark and gloomy aspect of our public affairs has thrown this province into great convulsions;" and it was recommended that "fit" persons be sent to a provincial convention "to devise proper ways and means to resume our original mode of government, . . . ; or some other which may appear to them best calculated to regain and secure our violated rights."<sup>3</sup> It was also voted that town-meetings should be held in the usual

cester. We have agreed to their proposal, and also invited Salem and Marblehead so that we expect four County's Committees to meet and conclude on proper steps to be taken respecting the executive Courts." *Adams Papers*, Bancroft Collection. The Worcester letter, dated August 15, asked a conference in order that a plan with reference to the courts, etc., might be formed, "that will easily be adopted by the Counties of Suffolk Middlesex and Worcester which in all probability will run through the Province." *Revolutionary Corresp.*, III., 819, Bancroft Collection. Cf. *Ibid.*, III., 821.

<sup>1</sup> *Journal of the Provincial Congress*, 631.

<sup>2</sup> *Ibid.*, 631.

<sup>3</sup> *Ibid.*, 633. Cf. *Mass. Gazette* (Draper), September 15, 1774; *Salem Gazette*, no. 15, October 7, 1774; 4 *American Archives*, I., 795-797.

manner, and that the towns should retain the money due to the provincial treasury "till public tranquillity be restored, and more confidence can be reposed in the first magistrate and his council."<sup>1</sup>

At a further session of these committees and delegates, held September 6, at the house of Mr. Timothy Bigelow, action was taken with reference to the closing of the royal courts, and that with immediate effect. At a still later session, on September 21, an address to Governor Gage was adopted,<sup>2</sup> steps were taken for the military organization of the county, and a county committee of correspondence was created,<sup>3</sup> with the duty, in part, "to prepare matter to lay before this body at their several meetings; to give the earliest intelligence to the several committees of any new attack upon the liberties of the people, and call a county congressional convention at any time, as occasion may require." One further act of importance was the recommendation that the representatives to the approaching General Court at Salem should be instructed to adhere strictly to the provincial charter as interpreted by the colonists, and that they should be given suitable instructions with reference to the possible meeting of a Provincial Congress.

Also in August, on the last two days of the month, there met at Concord one hundred and fifty committeemen, coming from every town and district in Middlesex county.<sup>4</sup> James

<sup>1</sup> *Journal of the Provincial Congress*, 634.

Certain resolves of the Worcester county convention, of August 29 to September 21, 1774, are printed in the *Massachusetts Gazette and Boston Post Boy*, no. 893, October 3, 1774; and in the *Essex Gazette*, nos. 323, 324, October 4 and 11, 1774.

<sup>2</sup> *Journal of the Provincial Congress*, 644, 645.

<sup>3</sup> Consisting of the committees of correspondence of the towns of Worcester and Leicester, and of Messrs. Thomas Denny, Joseph Henshaw, and Joshua Bigelow. *Ibid.*, 643.

<sup>4</sup> The proceedings are given in *Journal of the Provincial Congress*, 609-614.

*Cf. Boston Evening Post*, no. 2033, September 12, 1774; 4 *American Archives*, I., 750-753; *Mass. Gazette* (Draper), September 15, 1774; *Essex Journal*, no. 39, September 14, 1774; *Essex Gazette*, no. 320, September 6-13, 1774.

Prescott presided, and the principal work was incorporated in a report of the committee, adopted by a vote of one hundred and forty-six to four, asserting their allegiance to their "gracious sovereign," and, with reference to the charter, the courts, and the Provincial Congress, assuming a position similar to that already taken in Worcester. The alteration of the jury system was said to be "not only an evident infraction upon our charter, but a subversion of our common rights as Englishmen." The right of every people to meet, to petition, and to use every legal method for the removal of their common grievances, was asserted; and they insisted that any act which should prohibit such meetings "cuts away the scaffolding of English freedom, and reduces us to a most abject state of vassalage and slavery." Resolves of less special significance were adopted; and all was based upon such premises as this, that by the act of parliament "the fountains of justice are fatally corrupted." In such situation, they say: "Our defence must, therefore, be immediate in proportion to the suddenness of the attack, and vigorous in proportion to the danger." It was ordered that a copy of the convention's proceedings should be sent to the Continental Congress and to the clerk of each town in the county; and thereupon the convention voted its own dissolution.

On the following Tuesday, September 6, two other county conventions met, one at Dedham, the other at Ipswich. At the latter delegates gathered from every town in Essex county, and in the course of a two days' session a series of resolves, "after being read several times, debated on, and amended, were unanimously accepted, the delegates, one by one, declaring their assent."<sup>1</sup> These dealt with the adminis-

<sup>1</sup> Sixty-eight delegates were present. The proceedings are printed in *Journal of the Provincial Congress*, 615-618. The resolves of this convention are in the *Boston Evening Post*, no. 2034, September 19, 1774.

On the origin of this convention, see, for example, the vote of Ipswich, of

trative and constitutional problems already indicated, and added little to the current expression on those questions. As to the continuance of the county convention, the members took a novel step in empowering the members from two towns, Salem and Marblehead, to call another meeting of the delegates whenever they should think it necessary.

The convention which assembled at Dedham, September 6, and which continued its session at Milton, September 9, expressed for Suffolk county vigorous opinions concerning the points of controversy then familiar.<sup>1</sup> They repeated, in language more blunt than any used before and in terms which made this convention somewhat famous, the prevalent opinion that the three acts of parliament in question should not be obeyed. The condition of affairs at Boston prompted the demand that freedom of communication should be allowed between Boston and the outlying districts. To this address Gage returned an empty answer void of assurance. The committee in charge,<sup>2</sup> desiring not to be placed in a false

August 29, 1774, *Lincoln Papers*. Also, as to the vote of Marblehead, of August 15, 1774, to which the vote of Ipswich refers, see Roads, *History of Marblehead*, 104. For the proceedings, Cf. *Mass. Gazette* (Draper), September 22, 1774; *Salem Gazette*, vol. I., no. 12, September 16, 1774.

<sup>1</sup> Its proceedings are in *Journal of the Provincial Congress*, 601-609. The resolutions appear in *Boston Evening Post*, no. 2034, September 19, 1774. These were printed, with the resolution of the Continental Congress of September 17, 1774, in the *Connecticut Courant*, no. 509, September 26, 1774. The resolutions of the county convention are also in Teele, *History of Milton*, 425-429. Cf. *Boston Evening Post*, nos. 2034, 2037, September 19, October 10, 1774; *Connecticut Journal*, no. 362, September 23, 1774; *Salem Gazette*, October 14, 1774; 4 *American Archives*, I., 776-779, 901-903.

The preliminary county conference of Suffolk was held at Col. Doty's inn, Stoughton, August 16. An invitation to attend, extended by the committees of Dorchester, Roxbury, Milton, and Brookline, is in *Revolutionary Corresp.*, III., 627, Bancroft Collection. In a letter of August 21, 1774, Joseph Warren mentioned "the County Meeting which depend upon it will will [sic] have very important Consequences." *Autograph Letters of Joseph Warren*, Bancroft Collection.

<sup>2</sup> Including Joseph Warren, Benjamin Church, Joseph Palmer, and William Heath.

light by specious questions proposed by Gage in his response, sent him a further address in which they aimed to "justify the proceedings for which your excellency seems to be at a loss to account." They insisted "that no wish of independence, no adverse sentiments or designs towards his majesty or his troops now here," actuated the men they represented, as they repeated, as their only request, that the commander should desist from the work of fortifying Boston, that the entrance into the town might remain "as nature has formed it." Such an address Gage refused to receive "inform," and the committee imitated the convention by dissolving, prefacing the step by the resolution "that they had executed the commission entrusted to them by the county, to the utmost of their ability."

Scarcely a week after Warren's committee gave up its effort to reach an understanding, thirty-six men representing nine constituencies in Cumberland county met at the house of Mrs. Greele, in Falmouth.<sup>1</sup> Their first day, September 21, was occupied in taking action concerning the request of "the body of the people, who were assembled at the entrance of the town," and in requiring the attendance of the sheriff in order that they might determine his position with reference to the recent acts of parliament. He agreed to an appropriate declaration; this, under escort of the convention, he read "to the people, which they voted to be satisfactory, and after refreshing themselves, returned peaceably to their homes." On the following day, a series of resolutions was unanimously adopted describing at large the attitude already defined, and including both a clause in favor of the encouragement of manufacturers and an appeal that "every one should do his utmost to discourage lawsuits, and likewise

<sup>1</sup>The proceedings are in *Journal of the Provincial Congress*, 655-660. The resolutions and list of delegates were printed in the *Essex Gazette*, no. 323, October 4, 1774. The resolutions are in 4 *American Archives*, I., 798-802.

compromise disputes . . .," and that every one, furthermore, should endeavor "to suppress, at all times, riots, mobs, and all licentiousness, and that our fellow subjects would consider themselves, as they always are, in the presence of the great God, who loveth order, not confusion."

On the day when this convention at Falmouth dissolved, committeemen from nearly all the towns and districts of Hampshire county<sup>1</sup> met at Northampton, and in a two days' session announced their resolve to co-operate on the new lines of action. The proposal by the Middlesex convention of a Provincial Congress was expressly endorsed by the assembly at Northampton. The attitude of this body on another matter was excellently stated when, to all those towns which might elect representatives by virtue of Gage's writ, they suggested that it should be carefully considered "whether any such representatives can do any one act in concert with his excellency Thomas Gage, Esq., and his mandamus council, without an implied acknowledgment of the authority and force of the above-said acts of parliament."

During the following week two further county conventions were held. That of September 26 and 27 was an ample representation of Plymouth county, and by it were passed emphatic resolves bearing on the policies already indicated.<sup>2</sup> More simple, although of similar purport, were the resolu-

<sup>1</sup>The proceedings are in *Journal of the Provincial Congress*, 618-621. The list of delegates is given. Charlemont and Southwick were not represented. Hadley and Amherst each chose three delegates; Judd, *History of Hadley*, 406, 420. The proceedings were printed in the *Boston Evening Post*, no. 2037, October 10, 1774.

<sup>2</sup>*Journal of the Provincial Congress*, 621-625. Fifty-two delegates represented the fourteen towns of the county. The session of September 26 was at Plympton, of September 27 at Plymouth. The resolutions were printed in the *Massachusetts Spy*, no. 193, October 13, 1774, and in the *Boston Gazette*, no. 1017, October 10, 1774. Cf. *Mass. Gazette* (Draper), October 13, 1774; *Salem Gazette*, no. 16, October 14, 1774; *Boston Evening Post*, no. 2037, October 10, 1774.

tions adopted by the delegates of several Bristol county towns who on September 28 and 29 met at Taunton.<sup>1</sup>

Throughout practically the entire province, the representatives of the people of the towns were thus brought together for united action in their respective counties.<sup>2</sup> Each county, with unimportant exceptions, became possessed of a definite political organization, in some cases temporary and in all extra-constitutional, but vigorously used and well adapted for the immediate attainment of certain political objects which then were clearly understood.<sup>3</sup> These were repeatedly expressed by town-meetings and endorsed by county conventions, and their feasibility was demonstrated by the gathering of the first Provincial Congress in the week after the Bristol convention had met at Taunton. By that step the provisional organization was so developed as to coincide in its range of influence with the organization earlier maintained under the provincial charter. It was a simple thing for the leaders of neighboring towns, even of an entire county, to meet for conference and for the expression, in large degree authoritative, of their political beliefs and purposes. Such a step, however, unless carrying some endorsement of weight or significance, would not appear especially

<sup>1</sup> Proceedings in *Journal of the Provincial Congress*, 626, 627. Eleven towns were represented. The resolutions appeared in the *Mass. Spy*, October 6, 1774, and have been reprinted in *Quarter Millennial of Taunton*, 395-397.

<sup>2</sup> Even as to Barnstable county, *cf.* letter of Chatham committee to Boston committee, Nov. 1, 1774; postscript: "Liberty Gains Ground Considerable we have Got a County Congress and are to Set y<sup>e</sup> 16th Currant Notwithstanding all oppersition and it is Said that Even Harwich are about it." *Revolutionary Corresp.*, III., 243, Bancroft Collection. *Cf.* Resolutions of York county, November 16, 1774: 4 *American Archives*, I., 983-985.

<sup>3</sup> "Speculator" admits the legality of committees of correspondence as town officers, but criticises the county conventions, although of the latter he says: "When the powers of government in this State were suspended by the enemies of our peace, such political manoeuvres were necessary, and tended greatly to the salvation of America; . . . ." *Boston Gazette*, no. 1114, September 23, 1776. This article I have found to be reprinted in 5 *American Archives*, II., 339.

serious to the administration. Nevertheless, the similar gathering of delegates of all towns in a body representative practically of the entire province, while attended with far greater difficulty, was no new thing in the politics of Massachusetts.<sup>1</sup> It was a move, furthermore, certain, if successful, to present a difficult problem to the home government.

The experiment was successfully tried, and the English authorities, finding a province, which had hitherto been loyal, now fully organized and being driven beyond recall along the path of revolt, resorted to the arbitrament of arms and to political seduction. The one course was a failure, the other an anomaly; and virtual recognition of the *de facto* government of the provincial territory was hastened both by the ineffective course of the royal government and by the readiness and ability of the provisional organization to assume the character and perform the functions commonly belonging to a recognized government. With it the royal governor treated; to it he and those he represented surrendered the control of the royal province; by it were speedily assumed all those duties and privileges which made it the head of the only government that, existing on the territory of the earlier province, was recognized either by the inhabitants therein or by any power in those parts of the continent which even then were establishing new governmental arrangements typical, as well as indicative, of a new nationality.

Still more evident did the position occupied by the provincial government become when the outbreak of hostilities made the problem one of military science as well as of politics, when there was shown the plain necessity of some such directing force, and when the opportunities for the exertion of its power became numerous and important. Then it was that the true effect and significance of all this preparation by detailed and harmonious organization was

<sup>1</sup> Cf. The conventions of 1689 and 1768.

made plain. In the time of actual crisis the people of Massachusetts were able to act calmly and consistently, as well as unitedly. Strong enough to overcome internal dissension, they were able also to present outwardly a solid front. Their political solidity in the months when such was requisite was a guarantee of success, and, if appreciated, made it evident that the essential elements of the revolutionary movement were not simply military; neither was it wholly a national movement, but such that its character was most clearly revealed in local or provincial transitions even if they embraced few events so thrilling as to appeal strongly to the patriotic impulse. The earlier status was wholly provincial; the occasion and the beginning of the Revolution were purely local; provincial power was the basis, and subsequent commonwealth individualism was the destruction, of the first national government; throughout the period local rights and power found ready assertion except when smothered in the exigencies which made nationalism a piety and a necessity; throughout those years, as well, the province, and later the commonwealth, has always to be considered as a force concurrent, in all affairs of revolution, with the Continental Congress, and rendering to that body such assistance toward making the continent a unit as had been rendered to the central body of the province by the various town committees and county committees and county conventions. These, in the time of crisis, averted the weakness of anarchy and discord, and gave to Massachusetts such unity, strength, and regularity of organization as assured either success without remorse or failure without regret.

## CHAPTER V

### THE PROVINCIAL CONGRESS

#### § I. *General Review*

THE circumstances attending the disappearance of the royal legislature were for the colonists especially fortunate. The dissolution of that body harmonized with the plan of the more progressive faction<sup>1</sup> and offered an excellent opportunity for readily completing the program which already had been proposed and even begun. Local disorganization had been in large measure prevented by the maintenance of town governments; the possibilities of general and consistent action had been increased by the work of the several county conventions; and now the effectiveness of the many local efforts at organization and opposition was to be greatly increased. This was to be secured by the creation of a governing body representative of all the towns in the province and invested with power sufficient to perform all those necessary functions the suspension of which had been occasioned by, or had helped to occasion, the fall of the royal government in the province. The colonists having attained the political ends desired, it was essential to final success that they should avoid the disorganization naturally incident to the overthrow of a provincial government. Such unfortunate result they did avoid by the formation, as a temporary expedient, of this single representative body, which for the time being was recognized as possessing, with certain

<sup>1</sup> Even so early as June 1774, it had been said: "We will have a Congress at Concord." Cf. Winsor, *History of Duxbury*, 125.

limitations, the supremacy in executive and judicial, as well as in legislative affairs. The towns, the constituencies of the members of this central body, continued to claim and actively to exercise certain important rights, so that in the Massachusetts Congress it was quite impossible to develop such a type of dictatorship as is shown in the similar bodies in certain other provinces. Nevertheless, the Provincial Congress of Massachusetts assumed functions of sufficiently broad scope to effect successfully, and at the same time in a conservative manner, a transition to a more definitely organized form of government.

The theory of the situation excluded strict consideration of legality,<sup>1</sup> for, as Thomas Young wrote, "the Laws of God, of Nature and Nations oblige us to cast about for safety."<sup>2</sup> While the elastic "law of nature," however, might put wholly out of consideration the legal relations subsisting between the province and the home government, it was not by acts interpreted as destroying the binding force of obligations and relations within the province;<sup>3</sup> so that, while looking at the situation from one point of view, there appears to

<sup>1</sup> Cf. Joseph Hawley's "Broken Hints:" "The people will have some government or other — . . . ; legislation and executive justice must go on in some form or other, and we may depend on it they will; — . . . ." Niles, *Principles and Acts*, 325.

Cf. Letter by "Junius Americanus," addressed to Gen. Gage: "You charge the inhabitants of Massachusetts Bay with subverting their charter, by assembling in an illegal and unconstitutional manner. In this step, Sir, they have been obliged from the tyranny of laws to the liberty of nature." Reprinted from the *Pennsylvania Journal* in *New York Journal*, no. 1664, November, 1774.

Cf. Vote of West Springfield, April 11, 1775: "That the delegates be instructed to dissent from any proposal that may be made for setting up any form of civil government differing from that obtained in the Charter we hold under William and Mary, excepting where the *Laws of Self-preservation* (which supersede all others) necessarily require it." *Lincoln Papers*.

<sup>2</sup> Thomas Young, Boston, September 4, 1774, to S. Adams, Philadelphia. *Adams Papers*, Bancroft Collection.

<sup>3</sup> Cf. B. H. Hall, *History of Eastern Vermont*, 256.

have been a complete disregard of law, from another point of view there appears a scrupulous observance of all such elements of law and propriety as could render the proceedings of the revolutionists more effective and impart to them a clearer justification. The steps in the creation of a revolutionary body were as orderly and as near a semblance of legality as was possible;<sup>1</sup> a provincial representation was suggested by the committee of one county; the time and place of meeting were proposed by the convention of another county; and the movement was at once endorsed by those more permanent bodies, the town-meetings. These, with remarkable uniformity, empowered their representatives, on the occasion of the anticipated break with the executive, to resolve themselves into a Provincial Congress. Such, as has been seen,<sup>2</sup> was done, and even more. The election of representatives with these unusual powers had been often accompanied by the election of additional delegates to act simply in the Provincial Congress at the time and place agreed. The revolutionary body was thus, numerically, much more fully representative than the legal legislature

<sup>1</sup> Some local writers take an extreme position. Referring to October 4, 1774: "The vote of the assembly, therefore,—all the members of which had been legally elected in the manner prescribed by the charter, and under the call of the Governor,—must be considered the legitimate act of the *province*, in the only way in which the province could express its pleasure." A. C. Goodell, Jr., in *Essex Institute Historical Collections*, XIII., 31, 32.

<sup>2</sup> "As it was not thought prudent to assume all the powers of an organized government, they chose a president, and acted as a provincial congress, as previously proposed." Warren, *History of American Revolution*, I., 163.

Letter to Berkshire county, Sept. 24, 1774 [from Boston committee]: "We . . . forward you a Copy of the Proceedings of this & the Neighbouring Countys wherein we are univerally of Opinion that 'tis best to send as many Representatives as the Charter & Province Laws allow & them to instruct not to dissolve themselves but to form a provinciall Congress there to consult & execute Measures that concern the internall Government of y<sup>e</sup> Province, . . ." *Revolutionary Corresp.*, III., 159, Bancroft Collection.

would have been.<sup>1</sup> The resolving of a body of anomalous representatives into a Provincial Congress at Salem was followed by a prompt adjournment to Concord<sup>2</sup> and by the merging there on the appointed date, October 11, of the two sets of delegates into a body which for almost ten months was to direct the common affairs of the province.

The Congress which thus met was in more than numbers thoroughly representative. It was the direct organ of the towns, composed of responsible delegates acting under the direction of their respective towns. It was, as well, a body which had the recognition and support of practically the entire population.<sup>3</sup> Thus, in a letter already quoted, an active worker had written: "I have not heard a single individual object to a Provincial Congress, nor is it likely any objection will be made to any conclusions which may be formed there."<sup>4</sup> So, in fact, it was; then was shown the vigor of public opinion and the force of its endorsement. Otherwise it would have been impossible for this body to take the position in which it "conducted the affairs of the colony as if

<sup>1</sup> The *Massachusetts Spy*, of October 13, 1774, states that there were 90 delegates present, October 5. The same paper, in its issue of October 20, states that on October 14 more than 260 delegates were present. And also cf. Austin, *Life of Gerry*, I., 58. Bradford, *History of Massachusetts*, 245, incorrectly states that there were 288 delegates at Salem, October 7. "The whole number of members was 288; . . . ." Shattuck, *History of Concord*, 91.

<sup>2</sup> "ye Members convened at Salem, after having passed a Resolve or two for reprehending this Measure of ye ignorant General, adjourned to Concord for ye Convenience of meeting Members added to the ye Provincial Congress as will appear by ye papers; . . . ." E. Gerry, Boston, October 15, 1774, to S. Adams, Philadelphia. *Adams Papers*, Bancroft Collection.

<sup>3</sup> Although, cf. Athol committee, July 20, 1774, to Boston committee: "We greatly Lement that their are so great a number amongst ourselves that Join in the Conspiracy to overthrow our Excelent Constitution and to introduce a tiranical and arbitrary Goverment." *Revolutionary Corresp.*, III., 140, Bancroft Collection.

<sup>4</sup> Thomas Young, Boston, September 4, 1774, to S. Adams, Philadelphia. *Adams Papers*, Bancroft Collection.

they had been regularly invested with all the powers of government;" and in such a manner that their recommendations, as has been accurately stated, "were respected as sacred laws."<sup>1</sup> To be sure, these men had "no justification for convening by any provisions of the provincial charter,"<sup>2</sup> and they recognized the situation; they countenanced a revolution, but presumably they aimed at what they considered the best interests of their sovereign; they were eager to save the province from impending anarchy, and in the effort they rendered impossible both the ruin of anarchy and the misrule of monarchy. When the first Provincial Congress began its sessions, royal rule in Massachusetts was very limited both as to territory and as to functions; its continuance was possible, although problematical. When the last Provincial Congress was dissolved, royal rule in Massachusetts was practically impossible; the difficulties attending it had for twelve months been increasing, and had by events been given a significant emphasis.

The body in whose control now rested the affairs of Massachusetts effected at Concord a formal organization<sup>3</sup> by the election of those officers who at Salem had been provisionally chosen; and they at once placed in the hands of fifteen leaders, termed the "committee to take into consideration the state of the province,"<sup>4</sup> the practical direction of future

<sup>1</sup> John Marshall, *History of the Colonies planted by the English on . . . North America*, 424.

<sup>2</sup> J. T. Austin, *Life of Elbridge Gerry*, I., 52, 53.

<sup>3</sup> The distribution of the members among counties was as follows: Middlesex, 75; Worcester, 56; Hampshire, 39; Suffolk, 34; Essex, 27; Plymouth, 18; Bristol, 16; Barnstable, 8; Berkshire, 7; York, 6; Cumberland, 5; Dukes, 2; Lincoln, 0; Nantucket, 0.

<sup>4</sup> The committee included Hancock, Hawley, Gerry, Ward, and the two Warrens. *Journal of the Provincial Congress*, 16, 17. On November 23, others were added, including the members of the recent Continental Congress then in the Provincial Congress. *Ibid.*, 49. On December 5, John Adams was added. *Ibid.*, 58.

events. The Congress itself proceeded forthwith to the exercise of such powers as the welfare of the people was supposed to demand, and of such powers as were deemed ample to maintain the authority of the people and the security of political society during this strictly transitional period between the end of the king's government and the organization of a new government on a definite basis. It was natural that such a body should carry fully as much weight with its constituents as had the preceding one of June;<sup>1</sup> in each case the elections had been conducted on the same basis and with equal regard to statutory forms;<sup>2</sup> in the procedure of the bodies the difference was such only as was necessitated by the absence of an executive and the lack of a bicameral arrangement in the legislature. To the colonist, thus, the Congress differed from an assembly only in those points wherein the results of the administration plan were seen; for such violence to the provincial forms of government the colonist considered himself in no manner responsible; he attempted, by his expressions,<sup>3</sup> to throw the burden of responsibility upon his adversary; he attempted further, by his acts, to show the sincerity of those expressions, to make them tangible, and to save himself.<sup>4</sup>

<sup>1</sup> Lecky says: "It was obeyed as if it had been a regular branch of the Legislature, and it proceeded to organize the revolution." But he recognizes no attempt at a legal session of the General Court. *History of England in the Eighteenth Century*, III., 419, 420.

<sup>2</sup> Stedman, *War in America*, I., 108, calls this body a "self-constituted congress."

<sup>3</sup> Later, April 19, 1813, John Adams wrote to E. Gerry: "Why was the authority of Massachusetts, which enacted the law in all the forms of the constitution by their charter, called a convention? It was the general court, the regular legal constitutional legislature of the province, the crown governour having abdicated." J. T. Austin, *Life of Elbridge Gerry*, I., 515.

<sup>4</sup> A very unusual vote was that of South Brimfield, January 17, 1775, to the effect that they were not acquainted with the Provincial Congress and could not pledge adherence to all its acts; but that they would observe the "principles of

The possibility of such salvation for the colonist now rested with the course of the delegates in the Provincial Congress. In their first session, which ended October 14, they adopted an address to General Gage in which they treated of the attitude of the public, discussed military affairs, and laid special stress upon the erection, by the royal authorities, of works of defence on Boston "Neck." Gage made reply on October 17, disclaiming any evil purpose in his military operations, and challenging the legality of the body thus distinctly: "It is my duty, therefore, however irregular your application is, to warn you of the rock you are upon, and to require you to desist from such illegal and unconstitutional proceedings."<sup>2</sup> On the same day he writes of this message as one "which I had some difficulty in contriving, as I cannot consider them a legal Assembly, and a handle would have been made of it had I refused; and it was, moreover, necessary to warn them of their conduct, and require them to desist from such unconstitutional proceedings."<sup>3</sup> He avoided giving the colonists a "handle," but neither his statements nor those of the Congress could do more than define the problem and intensify the divergence of the parties involved.

On the day Gage wrote his disclaimer the Congress assembled at Cambridge, and there further expressed its relation to the interests of royalty. By a resolution of October 21 it was provided that all persons holding commissions under the forms recently prescribed by parliament, should be English Liberty" and would give regard to the advice of the Provincial Congress, "as far as agrees with our former Provincial Charter." *Lincoln Papers.*

<sup>1</sup> October 13, 1774; *Journal of the Provincial Congress*, 17, 18. This is printed in Niles, *Principles and Acts*, 297, 298.

On October 11 there were 260 present and only one dissenting voice in the votes on this matter. *Boston Gazette*, no. 1018, October 17, 1774.

<sup>2</sup> *Journal of the Provincial Congress*, 21.

<sup>3</sup> To Lord Dartmouth. 4 *American Archives*, I., 880.

given ten days in which to publish an acknowledgment of their former misconduct and a renunciation of their commissions, or to be "published" and treated as rebels.<sup>1</sup> The defiance of parliament was unequivocal; the entire royal civil list was to go the way of the mandamus council. That the plan of action thus indicated was endorsed by a sincere and sober purpose, was soon made evident. The advantages accruing from checking, if not completely stopping, royal administration, were to be enhanced by the creation of a similar official body recognizing only the authority of the people as expressed by their Provincial Congress. The movement was illustrated by the early action of the Congress in electing Henry Gardner receiver-general,<sup>2</sup> and in authorizing him to receive from the several collectors the money held by them on the account of the province. At the same time they advised the towns to direct their financial officers holding public money to pay the same at once to Gardner, engaging that such payments should operate as a complete release of the collectors from all subsequent claims relative to the legality of this action. It was also recommended that the sheriffs as well should make payments to Gardner.<sup>3</sup> The general recognition of the new financial officer by the towns<sup>4</sup> whence, and by the subordinates through whom, the money came, gave to the colonists one element of strength thor-

<sup>1</sup> *Journal of the Provincial Congress*, 25. Cf. *Ibid.*, 51, 52, 56, 60, 61, 94, 96, 111-113, 236, 249, 344.

<sup>2</sup> *Ibid.*, 36-38. Cf. *Ibid.*, 61, 65, 66, 113, 114, 146, 207, 234.

<sup>3</sup> *Ibid.*, 38, 39.

<sup>4</sup> E. g.: Marblehead, January 2-10, 1775, *Essex Gazette*, no. 338, January 17, 1775; Plymouth, December 29, 1774, January 3, 1775, *Essex Gazette*, no. 339, January 24, 1775; Falmouth, January 3, 1775, *ibid.* Sutton, January 5, 1775, Benedict and Tracy, *History of Sutton*, 92; Oxford, April 17, 1775, Daniels, *History of Oxford*, 128; Concord, November 21, 1774, Shattuck, *History of Concord*, 92.

oughly essential to their success in a strenuous contest.<sup>1</sup> To their opponents the step was a clear sign of the coming developments. It foreshadowed the formation of a government based on the authority of the people; and even if a denial of the king's sovereignty was now avoided, this action, and others like it, were the preliminaries of a reorganization of the state.<sup>2</sup> The stake was great; for the men of the convention and for their friends a course of defiance might mean the loss of all; destruction, at least political destruction, was even then in their path; but they dared to presume upon eventual success, and to act upon the presumption; and in that daring, they showed the reasonableness of Warren's enthusiasm, when of the convention he had written, "You would have thought yourself in an Assembly of *Spartans* or ancient *Romans*, had you been a witness to the ardour which inspired those who spoke upon the important business they were transacting."<sup>3</sup>

The third session of the first Provincial Congress, extending from October 17 to October 29, 1774, was marked by

<sup>1</sup> November 18, 1774, King George wrote to Lord North: ". . . the New England Governments are in a state of rebellion, blows must decide . . ." Donne, *Correspondence of George III. with Lord North*, I., 215.

<sup>2</sup> Cf. Gage to Lord Dartmouth, October 3, 1774: "They are shortly to have a Provincial Congress in this Colony, composed chiefly of the Representatives lately chosen to meet at *Concord*, where it is supposed measures will be taken for the government of the Province." 4 *American Archives*, I., 815. Gage to Dartmouth, September 20, 1774: "They talk of fixing a plan of Government of their own, . . ." *Ibid.*, I., 795.

<sup>3</sup> Jos. Warren, Boston, November 21, 1774, to Josiah Quincy, Jr. 4 *American Archives*, I., 990. In the same letter Warren expresses the belief that the recent dissolution of Parliament and the receipt of favorable letters from England "will induce us to bear the inconvenience of living without Government until we have some further intelligence of what may be expected from *England*. It will require, however, a very masterly policy to keep the Province for any considerable time longer in its present state." He further states that Boston is by far the most moderate part of the province. The letter is printed in Frothingham, *Life of Joseph Warren*, 394-396.

several acts of a general and preparatory nature, bearing especially upon the commercial and administrative relations with Great Britain, and pointing naturally, in each case, to a more or less prompt severance of those connections. A "replication" to Gage's reply is formed at the close of the session; and in this they endeavor to prove "that while the 'avowed enemies' of Great Britain and the colonies, are protected by your excellency, the lives, liberties, and properties of the province, who are real friends to the British constitution, are greatly endangered, whilst under the control of your standing army."<sup>1</sup> On the other hand, in regard to their maintenance of the charter, they hold that a statement of "the truth, relative to this matter, must be a full vindication of our conduct therein." They assert that their constituents "have been compelled, for the laudable purposes of preserving the constitution, and therein their freedom, to obtain the wisdom of the province in a way which is not only justifiable by reason, but, under the present exigencies of the state, directed by the principles of the constitution itself;"<sup>2</sup> and for their justification allude to English precedent at the revolution of 1689. Having taken progressive action with reference to the local militia organizations, the provincial treasurer, and the Committee of Safety, and having already appointed a committee "to sit in the recess of this congress,"<sup>3</sup> an adjournment was taken on October 29 until November 23.

This fourth and last session of the first Congress, like that immediately preceding, was held at Cambridge. The actual session was one only of sixteen days; in other connections have been indicated the principal acts therein. By a special address it was aimed to secure the helpful influence of the

<sup>1</sup> October 29, 1774; *Journal of the Provincial Congress*, 43.

<sup>2</sup> *Ibid.*, 44.

<sup>3</sup> October 27, 1774; the committee comprised Messrs. Hawley, Hancock, Dexter, Gerry, Heath, Foster, and James Warren. *Ibid.*, 35, 36.

clergy in behalf of the resolutions of the Continental Congress; attention was given to the tory town of Hardwick and the distasteful "association" of Timothy Ruggles; while in acting upon a memorial from the Baptists the Congress announced that its members considered themselves as "being by no means vested with powers of civil government, whereby they can redress the grievances of any person whatsoever, . . . ."<sup>1</sup> Before dissolving, this Congress adopted an address to their constituents, which was ordered to be printed in all the Boston newspapers and to be issued in a hand-bill to every town and district in the province. This began with a strong characterization of the time when they were chosen to consult on matters of common safety and defense as a time "when the good people of this colony were deprived of their laws, and the administration of justice, civil and criminal; when the cruel oppressions brought on their capital had stagnated almost all their commerce; when a standing army was illegally posted among us for the express purpose of enforcing submission to a system of tyranny; and when the general court was, with the same design, prohibited to sit; . . . ."<sup>2</sup> They early inserted the saving qualification that they still had "confidence in the wisdom, justice, and goodness of our sovereign, as well as the integrity, humanity and good sense of the nation; although "the general tenor of our intelligence from Great Britain, with the frequent reinforcements of the army and navy at Boston," excited "the strongest jealousy that the system of colony administration, so unfriendly to the protestant religion, and destructive of American liberty," was still to be pursued and attempted with force to be carried into

<sup>1</sup> December 9, 1774. *Journal of the Provincial Congress*, 67.

<sup>2</sup> December 10, 1774. *Ibid.*, 69. This is printed in Niles, *Principles and Acts*, 298-300, under date of December 4, 1774, although no session was held on that day.

execution." Even so they urged their fellowmen all to be "solicitous, that no disorderly behavior, nothing unbecoming our characters as Americans, as citizens, and christians, be justly chargeable to us."<sup>1</sup> The commercial situation and the military outlook served as themes of encouragement; the political condition of England was indicated; and a plea put forth for undeviating adherence to the plans of the Continental and Provincial Congresses.

In connection with the last they gave a view of the internal relations of the revolutionary organizations, when they said: "Your Provincial Congresses . . . . will hold up the towns, if any should be so lost as not to act their parts, and none can doubt that the Continental Congresses will rectify errors, should any take place in any colony through the subtlety of our enemies."<sup>2</sup> The equipment and discipline of the militia were emphasized, and their conclusion offered the "determination to stand or fall with the liberties of America," and the hope that "this injured people" might be "reinstated in the full exercise of their rights without the evils and devastations of a civil war."<sup>3</sup> This address, it was later directed, was to be sent to each local committee of correspondence, or, if none such existed, to the selectmen of each town and district; the same distribution was to be made of a report presented by the committee on the state of the province, and accepted the same day. The preamble alluded to the "fatal experience" of other states incident to a too protracted delegation of powers. The resolutions stated that the adjournment of October 29 was made "from a due consideration of the present exigencies of the public affairs, and the evident necessity of farther deliberation thereon."<sup>4</sup> Such a condition did not then exist to sanction a similar step and theory condemned a longer continuance

<sup>1</sup> *Journal of the Provincial Congress*, 70.

<sup>2</sup> *Ibid.*, 71.

<sup>3</sup> *Ibid.*, 71, 72.

<sup>4</sup> *Ibid.*, 73.

of the present Congress. The Congress, therefore, resolved upon its own dissolution, but "being deeply impressed with a sense of the increasing dangers which threatened "the rights and liberties of the people of this province with total ruin," they recognized the necessity of a frequent meeting of a provincial assembly; and they acted accordingly. It was recommended to each town and district that those in each who were qualified by provincial law to vote for representatives in the General Assembly should elect as many members as might be determined by such constituencies, to meet in a Provincial Congress at Cambridge on February 1, 1775, and to serve therein until a specified day in the subsequent May.

The function of this second Congress was indicated as being "to consult, deliberate and resolve upon such farther measures as, under God, shall be effectual to save this people from impending ruin, and to secure those inestimable liberties derived to us from our ancestors, and which it is our duty to preserve for posterity."<sup>1</sup> Difficulty during the intervening period was to be avoided by empowering the delegates who should be chosen by five towns<sup>2</sup> near Boston, or a majority of them, to call the Congress, in case of need, to meet at any other place and at an earlier date. The towns were urged so to instruct their delegates, and observance of such instructions was recommended. Having thus provided for the creation of the body which was to succeed itself, and thanking John Hancock for his "constant attendance and faithful services as president," the first Provincial Congress of Massachusetts was, on December 10, 1774, by its own vote dissolved.

The second Provincial Congress convened, as planned, on February 1, 1775, and was dissolved May 29, 1775. The

<sup>1</sup> *Journal of the Provincial Congress*, 73.

<sup>2</sup> Charlestown, Cambridge, Brookline, Roxbury, Dorchester. *Ibid.*, 74.

period is commonly divided into four sessions,<sup>1</sup> virtually into three, and is marked by much important activity, the salient points of which have been indicated elsewhere in this work. The constitution of this body, it will be seen, was similar to that of its predecessors in that the conditions of the franchise were the same; in each case the qualifications of members, and the decision thereon, rested entirely, at least in the later case, upon the decision of the unit of representation.<sup>2</sup> In each case the Congress was a gathering of town and district delegations<sup>3</sup> responsible to their constituencies and acting upon the authority of such. The organization of the second Congress was like that of the first. John Hancock was unanimously chosen president and Benjamin Lincoln was again appointed secretary.<sup>4</sup> Immediately, as in the preceding instance, a strong committee was appointed "to take into

<sup>1</sup> At Cambridge, February 1—February 16; at Concord, March 22—April 15; at Concord, April 22; at Watertown, April 22—May 29. *Journal of the Provincial Congress*, 75.

<sup>2</sup> The local body was not in all points unrestricted. Thus, on February 6, 1775, there was presented a petition of Abijah Browne and others, "setting forth the irregularity of the choice of Jonas Dix, Esq., to represent the town of Waltham in this Congress," and a counter-petition of Leonard Williams and others. The Congress resolved "that in case the averments in Browne's petition mentioned were true, they are not sufficient to disqualify Jonas Dix, Esq., member from Waltham, from having a seat in this Congress." *Ibid.*, 86.

An illustration of the relations between the towns and Congress is shown in an unusual manner by the action of the Congress, 1775, when it was: "Resolved, That the inhabitants of the town of Northfield be desired, in consideration of the bodily indisposition of their present member, Mr. Ebenezer Jones, which prevents his attendance, to add one other member to him in order that their town may be represented in Congress, who are very desirous that the wisdom of the province may be collected at this critical juncture of our public affairs." *Ibid.*, 129.

<sup>3</sup> The roll of the second Congress gives 195 towns and districts as represented by delegates, whether in every instance present or not. The 229 delegates are distributed among the counties, as follows: Middlesex, 42; Worcester, 40; Hampshire, 32; Suffolk, 28; Essex, 28; Plymouth, 15; Bristol, 12; Berkshire, 10; York, 7; Lincoln, 6; Barnstable, 5; Cumberland, 4; Dukes, 0; Nantucket, 0.

<sup>4</sup> *Ibid.*, 84.

consideration the state and circumstances of the province."<sup>1</sup> Early in the session was adopted an address to their "friends and fellow sufferers," the inhabitants of Massachusetts. By this the circumstances are stated to be such that "resistance is so far from being criminal, that it becomes the Christian and social duty of each individual."<sup>2</sup> Gratitude to the Almighty is enjoined "for his having placed you under such a form of government, as, when duly administered, gives the meanest peasant the same security in his life and property, as his sovereign has in his crown."<sup>3</sup> The rights of property, the theory of representation, perversion of colonial administration, and imperial tyranny are touched upon. "Fleets, troops, and every implement of war, are sent into the province, with apparent design to wrest from you that freedom which it is your duty, even at the risk of your lives, to hand inviolate to posterity."<sup>4</sup> The plans of the Continental and Provincial Congress were heartily endorsed. Emphasis was put upon the need of greater military efficiency and resources and upon the importance of an immediate improvement in the finances of the province.<sup>5</sup> The conduct of the

<sup>1</sup>This comprised Messrs. Hancock, Hawley, Cushing of Boston, Adams, James Warren, Paine, Pitts, Holten, Heath, Gerrish, Cushing of Scituate, Ward, and Gardner. On February 2, Messrs. Lee, Orne, Palmer, Gerry, Foster, and Bowers were added. *Ibid.*, 84. On March 22, Messrs. Lothrop and Dexter were added. *Journal of the Provincial Congress*, 109. On April 7, Dr. Warren and Dr. Church were added. *Ibid.*, 132.

<sup>2</sup>February 17, 1775, Gov. Gage wrote to Lord Dartmouth: "If this Provincial Congress is not to be deemed a rebellious meeting, surely some of their resolves are rebellious, though they affect not to order, but only to recommend measures to the people; . . . ." *New York Journal*, no. 1697, July 13, 1775.

<sup>3</sup>*Ibid.*, 91.

<sup>4</sup>*Ibid.*, 92.

<sup>5</sup>E. g., the Shelburn committee, May 1, 1775, wrote to the committee at Northampton: "As to our Province Money The Town's Unanimously Agreed to pay it in to Henry Gardner Esqr of Stow but we are a New township and money being Scarce we have it not Collected and the money is not in the place to Collect but we would Directly Hire it if we knew where to Git it, and we will Do all we Can to Git it." *Hawley Papers*, II., Bancroft Collection. On May 10, 1775, in a

people was commended and a continuance of their steadfastness was shown to be essential to their escape from the "galling yoke of despotism . . ." And furthermore, since "subjects generally pay obedience to the laws of the land, to avoid the penalty that accrues on breach of them," the Congress expresses to its constituencies its assurance "that, as you hitherto have, you will continue still strictly to adhere to the resolutions of your several congresses; . . ."<sup>1</sup>

It was in the first session of this Congress that intercolonial relations were put on a more definite basis by the appointment of an unusually able committee of nine "to correspond with the neighboring governments."<sup>2</sup> On the same day the Congress took a step which was deemed "highly and peculiarly proper" in appointing March 16 as a day of fasting and prayer, an opportunity which should be taken to beg God's "blessing upon the labors of the field, upon our merchandize, fishery and manufactures, and upon the various means used to recover and preserve our just rights and liberties;" and when there should be offered the further prayer "that his blessing may rest upon all the British Empire, upon George the Third, our rightful king, and upon all the royal family, . . ."<sup>3</sup> The session was concluded on the same day by the appointment of Concord as the place, and March 22 as the date, of the next meeting, by the removal from the members of the injunction of secrecy, and by the cautionary authorization of the delegates of five towns to call the Congress at an earlier date, if necessary, although at no other than the appointed place. Conformity to such letter to Mr. Sedgwick, Joseph Hawley spoke of "ye Shocking backwardness of ye Towns to pay their Taxes . . . ." *Ibid.*, II. Cf. *Manchester Records*, II., 147, as to December, 1774. Cf. Jameson, *Amherst Records*, 67. Cf. *Revolutionary Corresp.*, III., 515, Bancroft Collection. Cf. *Boston Town Records* XVIII., 222.

<sup>1</sup> *Journal of the Provincial Congress*, 93.

<sup>2</sup> February 16, 1775; *Ibid.*, 105, 106.

<sup>3</sup> *Ibid.*, 107.

possible procedure was merely recommended by the Congress; the emergency, however, did not arise.

The second session of the second Provincial Congress began at the appointed time, and at once a warning was issued against relaxation in the work of defence and military preparation.<sup>1</sup> Relatively little, however, was accomplished in the early days, so that on April 1 the attendance of members was enjoined and two days thereafter two committees were appointed, one to report a resolution to summon the members from the counties of Hampshire, Berkshire, Worcester, and Bristol, the other to report a resolution to be inserted in the Salem papers requiring the attendance of all the absent members, and "a recommendation to the several towns and districts, who have not yet sent members to the Provincial Congress, that they elect them, and direct their immediate attendance."<sup>2</sup> Within a week more than one hundred members were in attendance, so that it became possible to transact with a fairly representative body a reasonable amount of effective business.<sup>3</sup> On April 15, however, an adjournment<sup>4</sup> was taken to May 10, and, as formerly, the delegates of the five towns near Boston were empowered, in case of need, to summon the members to Concord at an earlier day.<sup>5</sup>

The wisdom of the precaution was at this time made manifest. The apprehensions of an early crisis developed so

<sup>1</sup> *Journal of the Provincial Congress*, 110.

<sup>2</sup> *Ibid.*, 117.

<sup>3</sup> In Frothingham, *Life of Joseph Warren*, 445, is reprinted from the *Salem Gazette*, a resolution of April 3, 1775, not in the journal of the Congress, alluding to the absence of several members on leave and to the recent receipt of important intelligence from England, and directing the prompt attendance of all members, "that so the wisdom of the province may be collected."

<sup>4</sup> *Journal of the Provincial Congress*, 146.

<sup>5</sup> *The Boston Gazette*, no. 1044, April 17, 1775, contained the following in large type: "The Provincial CONGRESS adjourn'd last Saturday Afternoon, to the 10th Day of May next; but if necessary, to meet earlier. And we have it from undoubted Authority, that a perfect Unanimity prevail'd in all the important Measures and Deliberations which came before them."

quickly and so acutely, immediately after the adjournment, that on April 18<sup>1</sup> a meeting was held of members of the five delegations and by their authority a call, signed by Richard Devens of Charlestown, was sent to the members of the Congress, insisting upon the necessity of a meeting, and requesting their immediate attendance at Concord, "as the closest deliberation, and the collected wisdom of the people, at this alarming crisis, are indispensably necessary for the salvation of the country."<sup>2</sup> Accordingly, sessions were suddenly resumed on April 22, when after a short morning meeting at Concord, under Richard Devens, as chairman, the Congress adjourned to Watertown, where it took up its labors on the afternoon of the same day. On the next day, Sunday, Dr. Joseph Warren was elected president, *pro tem.*,<sup>3</sup> proceedings were pushed with vigor and thoroughness under the impetus of the affair at Lexington, and one week after that event there were adopted a letter to Benjamin Franklin, their

<sup>1</sup>On April 16, 1775, Gov. Gage wrote to Gov. Martin, of South Carolina: "This Province has some time been and now is in the new fangled legislature termed a Provincial Congress, who seem to have taken the Government into their hands. What they intend to do I cannot pretend to say, but they are much puzzled how to act. Fear in some, and want of inclination in others, will be a great bar to their coming to extremities, . . . ." *Journals of the Provincial Congress of New York*, I, 57.

<sup>2</sup>*Ibid.*, 147.

<sup>3</sup>*Ibid.*, 149; on April 24, Rev. Mr. Murray was "appointed" president *pro tem.* *Ibid.*, 150. On May 2, Mr. Murray being absent, it was resolved, "That another president be chosen *pro tempore*, and that he be chosen by nomination." Col. James Warren was chosen, and a committee sent to notify him; he attended and offered reasons for an excuse, which were accepted. The peculiar process then adopted was the passage of a motion to appoint a committee "to wait on Doct. Joseph Warren, informing him of the absence of the Rev. Mr. Murray, who has lately officiated as president of this Congress, and to know of Doct. Warren if he can now attend the Congress in that station." Warren began his duties in this position on the afternoon of the same day. *Ibid.*, 178.

"The congress of our colony could not observe so much virtue and greatness without honoring it with the greatest mark in their favor; . . . ." Oration by Perez Morton, on Joseph Warren, April 8, 1776. Niles, *Principles and Acts*, 61.

agent at London, and an address to the people of Great Britain. The former enclosed, for publication and distribution, several papers, relative to the event of April 19. The letter itself bore an allusion to "both Englands," to which was the sequel "that whatever price our brethren in the one, may be pleased to put on their constitutional liberties, we are authorized to assure you, that the inhabitants of the other, with the greatest unanimity, are inflexibly resolved to sell theirs only at the price of their lives."<sup>1</sup> The address to the English was largely an account of the conflict on April 19, and of those acts which they termed the "marks of ministerial vengeance against this colony, for refusing, with her sister colonies, submission to slavery;" and even these, they affirmed, had not yet detached them from their king. The appeal to sentiment was followed, in conclusion, by the expression of the hope that, "in a constitutional connection with the mother country, we shall be altogether a free and happy people."<sup>2</sup>

The session under review effected an advance in the procedure of the Congress by the adoption of a series of ten rules governing the conduct of the meetings. Six were chiefly rules of the floor. Of the others, one rule provided that no person should nominate more than one person for a committee, provided the person so nominated be chosen; another, that no member should be obliged to serve upon more than two committees at a time, or to be chairman of more than one committee; and still a further rule was that no vote should be reconsidered when there were fewer in Congress than when it was passed. A most important rule was that no grant "for money or other thing shall be made, unless there be a time before assigned for that purpose."<sup>3</sup> The Congress thus was slow in perfecting even its temporary or-

<sup>1</sup> *Journal of the Provincial Congress*, 154.

<sup>2</sup> *Ibid.*, 156.

<sup>3</sup> *Ibid.*, 164.

ganization; it was equally tardy in placing the province in a position of security or, at least, of defence. The situation, as well as the spirit of the leaders, was shown in a letter of April 28, 1775, from the Congress to Governor Hopkins, of Rhode Island. "We beg leave," they say, "to suggest to you the critical situation of this colony at the present time, which disables this Congress from immediately seizing every crown officer in the government. Boston is closed, . . . Several of our seaports are blockaded with ships, and threatened destruction if they join the army. . . . Should we, therefore, seize the crown officers as proposed, it may hurl on our numerous sea ports sudden destruction, before they have had opportunity of saving themselves."<sup>1</sup>

Amid such distress and uncertainty the Congress prepared for its own dissolution. The date of that had, in the act creating the Congress, been fixed as not later than May 30. As "the exigencies of our public affairs render it absolutely necessary, for the safety of this colony, that a new Congress be elected," it was resolved, on May 5, that the towns and districts should elect delegates to meet in Provincial Congress at Watertown on May 31. The size of delegations was left, as before, indeterminate; the franchise again was based on the provincial law; and the duration of the approaching Congress was limited to six months.<sup>2</sup> The second Congress was dissolved May 29.<sup>3</sup> Two days thereafter began the sessions of the third Provincial Congress,<sup>4</sup> a body in all re-

<sup>1</sup> *Journal of the Provincial Congress*, 166.

<sup>2</sup> *Ibid.*, 195, 196.

<sup>3</sup> The records of the last eight days of this session are not extant. Cf. *ibid.*, 248.

<sup>4</sup> The size of this body and distribution by counties was as follows: Worcester, 38 towns, 39 delegates; Hampshire, 33 towns, 40 delegates; Middlesex, 33 towns, 39 delegates; Essex, 20 towns, 30 delegates; Suffolk, 18 towns, 27 delegates; Plymouth, 13 towns, 17 delegates; Bristol, 12 towns, 17 delegates; Berkshire, 11 towns, 10 delegates; Barnstable, 9 towns, 11 delegates; York, 5 towns, 5 delegates; Cumberland, 5 towns, 4 delegates; Lincoln, 5 towns, 4 delegates; Dukes, 2 towns, 2 delegates; Nantucket, no representation. Total of 204 towns represented by 245 delegates. *Ibid.*, 273-279.

spects similar to its predecessors.<sup>1</sup> The officials of the second Congress also served this, Joseph Warren, until his death, as president,<sup>2</sup> and Samuel Freeman as secretary.<sup>3</sup> By this body the affairs of the province were administered until July 19, 1775, a brief period in which important constitutional and military changes were effected, each of which can best be indicated in connection with the series of antecedent events. It will serve the purpose to notice first the position of the Congress with reference to military affairs, and, after a review of some of the more important lines of its activity, to consider the steps by which the Provincial Congress was superseded by a General Court elected in accordance with the charter of 1691, and with the last provincial election law.

### § 2. *Military Affairs*

Much of the time of the Provincial Congress was devoted to military organization in anticipation of a coming struggle. Thus, even on October 19, a committee of five, including Captain Heath, was appointed "to make as minute an inquiry into the present state and operation of the army as may be,"<sup>4</sup> and their report on the next day was immediately

<sup>1</sup> We find here another instance of the control of the Congress over elections. Upon the basis of a committee report the Congress, "upon examination, judge that the persons returned as delegates for Eastham, in the county of Barnstable, were not legally chosen, and that the allowing either of them a seat in this house would be attended with many inconveniences," and therefore pass specifically for Eastham the resolve for the election of delegates originally sent out by the second Provincial Congress. *Journal of the Provincial Congress*, 289.

<sup>2</sup> On June 19, 1775, James Warren was chosen president. *Journal of the Provincial Congress*, 357. James Warren, for his services as president of the Provincial Congress, received a vote of thanks from the house of representatives, October 3, 1775. *Journal of the House of Representatives*.

<sup>3</sup> February 9, 1776, the house of representatives voted £2 8 sh. for the services of Samuel Freeman as secretary of the Provincial Congress, July 7-19, 1775, "in full," and £25 for recording the "doings." *Journal of the House of Representatives*.

<sup>4</sup> *Journal of the Provincial Congress*, 22.

followed by the appointment of a committee of thirteen, two from Suffolk and one from each of the other counties, to consider the steps necessary for the defence and safety of the province.<sup>1</sup> After four preliminary reports, the work of the committee was accepted at the second session, on October 26. The resolutions summarized the relations of the people with the royal government, the acts and the attitude of the latter, the results of the various episodes, and the present status. They asserted a desire for peace but admitted that there was reason to be "apprehensive of the most fatal consequences," against which they desired that they might be in some degree prepared. The report included the establishment of a Committee of Safety for the purpose of increasing the military efficiency of the population, and included as well provision for the election of commanding officers by the Congress and of subordinates by the field officers and by the companies, for the formation of a complete militia system, and for the instruction and equipment of the people. On the same day a committee was appointed whose report, which was accepted on October 29, turned against the king one of his own weapons. It was now "recommended to the inhabitants of this province, that in order to their perfecting themselves in the military art, they proceed in the method ordered by his majesty in the year 1764, it being, in the opinion of this Congress, best calculated for appearance and defence."<sup>2</sup>

A definite beginning was thus effected. Little of striking importance could be done, and yet the quiet training of the men to military service and the gradual supply of the whole province with sufficient arms and adequate ammunition was

<sup>1</sup> *Journal of the Provincial Congress*, 23. Samuel Dexter and Capt. Heath represented Suffolk Co., Major Hawley Hampshire Co., and Col. Ward Worcester Co. The members were named by the delegates from each county respectively. On October 24 the Congress added Mr. Gerry and three others to this committee. *Ibid.*, 29.

<sup>2</sup> *Ibid.*, 41.

work which in its results was to be of vital importance. The renewal, by the second Provincial Congress,<sup>1</sup> of the powers of the Committee of Safety was accompanied by the reappointment of "Prebble," Ward, and Pomeroy, and the appointment of John Thomas and William Heath,<sup>2</sup> as general officers; and their business was stated to be the opposition to the execution by force of two of the recent acts of parliament. While the Congress took an active control of military affairs, much of the routine work was relegated to the Committee of Safety. The larger body, however, acted throughout with full knowledge and realization of the situation; and this was made possible by such acts as that of March 22, 1775, when a committee was appointed "to receive the returns of the several officers of militia, of their numbers and equipments, and the returns from the several towns of their town stock of ammunition."<sup>3</sup> The Congress aimed at a collection and more effective distribution of the available arms and ammunition. It further could use its superior position to appeal successfully to the population of the entire province for early activity against a common enemy. It finally urged that the preliminary plans of defence "be still most vigorously pursued, by the several towns, as well as individual inhabitants, and that any relaxation would be attended with the utmost danger to the liberties of this colony and of all America;"<sup>4</sup> and the unpretentious efforts of the first months were in large measure completed when, on April 5, 1775, there were adopted for the control of the "Massachusetts army" the fifty-three "articles of war."<sup>5</sup>

<sup>1</sup> February 9, 1775.

<sup>2</sup> On February 15, 1775, John Whitcomb was elected an additional general officer.

<sup>3</sup> *Journal of the Provincial Congress*, 109.

<sup>4</sup> March 24, 1775, *Ibid.*, 110.

<sup>5</sup> *Ibid.*, 120-129. On May 5, 1775, it was "Resolved, That the assembly of Connecticut be supplied with the rules and regulations which have been recommended to be observed by the army now raising in this colony." *Ibid.*, 196.

The resolves introductory to this code state that "the lust of power, which of old oppressed, persecuted, and exiled our pious and virtuous ancestors from their possessions in Britain, now pursues with tenfold severity us, their guiltless children," who now "have reason to apprehend, that the sudden destruction of this province is in contemplation, if not determined upon;" and now "the great law of Self-preservation" requires an "army of observation and defence" to prevent the execution by force of the acts of parliament. From the requirements that all "officers and soldiers, not having just impediment, shall diligently frequent divine service and sermon," and that "members of a court martial are to behave with calmness, decency and impartiality;" down to the details of ordinary army life, the articles comprise a varied but useful code of military administration. Apart from its particular provisions, it was significant as indicating an important advance in the organization of the province and as emphasizing the control of the Congress over that branch of service which at the time was by far the most important. Such a basis could give much more meaning to appeals of the kind sent out by the Congress to the committees of correspondence in Boston and eleven neighboring towns, on April 7, 1775, when they were urged to exert themselves "that the militia and minute men of your counties be found in the best posture of defence, whenever any exigence may require their aid;" yet the Congress did not recommend any measures that their enemies might plausibly interpret as a commencement of hostilities.<sup>1</sup>

On the following day an important step was taken; a report by the committee on the state of the province was followed by the adoption, by a vote of 96 in a house of 103, of a resolution that "the present dangerous and alarming situation of our public affairs, renders it necessary for this

<sup>1</sup> *Journal of the Provincial Congress*, 134.

colony to make preparations for their security and defence, by raising and establishing an army, . . .”<sup>1</sup>

Delegations were at once appointed to visit Connecticut, Rhode Island and New Hampshire to secure their concurrence; and one week later the Congress adjourned to May 10. Such recess, however, was interrupted by the events of April 19. Three days thereafter the Congress re-assembled at Concord; in the afternoon of the same day they met at Watertown and requested the attendance of the Committee of Safety with whatever plans they might have.<sup>2</sup> On the succeeding day, Sunday, April 23, it was unanimously resolved that an army of 30,000 men should be immediately raised, and that 13,600 men should be the quota of Massachusetts.<sup>3</sup> The Committee of Safety, in co-operation with Messrs. Cushing, Sullivan, Whitcomb and Durant, were instructed “to bring in a plan for the establishment of the officers and soldiers necessary for the army,” and to sit immediately. This step was communicated to the three adjoining provinces, and a letter was sent by express to each colonel in the army. More rapidly than had been anticipated the war footing was approached.<sup>4</sup>

“Hostilities are at length commenced in this colony,” said the Congress in the address of April 26, to the inhabitants of Great Britain. Two days later, in a letter to delegates of New Hampshire, the Congress expresses the opinion “that a powerful army on our side, must, at once, cut out such a work for a tyrannical administration, as, under the great

<sup>1</sup> *Journal of the Provincial Congress*, 135.

<sup>2</sup> *Ibid.*, 147.

<sup>3</sup> *Ibid.*, 148. On April 24 it was resolved to distribute 300 hand-bills containing the resolves for the establishment of an army. *Ibid.*, 150.

<sup>4</sup> On April 24 a committee of one from each county was appointed to attend the committee of safety “and let them know the names of the officers in said counties belonging to the minnte men, and such as are most suitable for officers in the army now raising.” *Ibid.*, 150. On April 25 it was voted to reduce each company from 100 to 59 men, ten companies making one regiment. *Ibid.*, 152.

opposition which they meet with in England, they cannot accomplish;"<sup>1</sup> while, on the other hand, they could say that the "sanguinary zeal of the ministerial army, to ruin and destroy the inhabitants of this colony, in the opinion of this Congress hath rendered the establishment of an army indispensably necessary."<sup>2</sup> Toward the success of the movement further typical action was that of May 8, when certain men were appointed to collect the province arms in Hampshire and Berkshire counties,<sup>3</sup> and when a committee was appointed to report a resolve recommending the saving of straw for the use of the army.<sup>4</sup> On the same day it was recommended to the local committees of correspondence, or, in lack of such, to the selectmen, to inquire into the principles and conduct of all suspected persons, and cause to be disarmed all who would not give trustworthy assurances, "of their readiness to join their countrymen, on all occasions, in defence of the rights and liberties of America;"<sup>5</sup> the local and internal elements of hostility to the new program of action were thus at once to be partially removed, and the chances of failure considerably decreased.

By a long series of acts with a variety of provisions the Congress took its position as the responsible head of the military force of the province. By it officers were commissioned, enlistments authorized, and regulations established. By it, as well, the building of various fortifications was ordered, the distribution of supplies regulated, and a supervision exercised over even the smallest details of military equipment and procedure. Such a position was for a body of this kind natural and perfectly simple, and a recapitulation of votes and reports would only introduce much detail of slight

<sup>1</sup> *Journal of the Provincial Congress*, 162.

<sup>2</sup> Letter from the Mass. Provincial Congress to the Continental Congress, May 3, 1775. *Ibid.*, 188.

<sup>3</sup> *Ibid.*, 204.

<sup>4</sup> *Ibid.*, 206; *Cf. Ibid.*, 211.

<sup>5</sup> *Ibid.*, 205.

significance and serve chiefly to emphasize the importance of the military situation at the time. For a consideration of the constitutional transition discussion of the military problem is hardly essential, even though at times fully one half of the proceedings of the Congress related to affairs of defence. The mere statement of such activity and the indication of the headship acquired by the body in these matters may suffice to define the nature and extent of one of the several forms of power exercised by the Provincial Congress. While thus controlling completely this branch of the provincial service, the Congress took a step of significance when, on May 15, 1775, it voted that the committee having in preparation an application to the Continental Congress should "be directed to insert a clause therein, desiring that the said congress would take some measures for directing and regulating the American forces."<sup>1</sup> By such beginnings was undertaken the incorporation of provincial "armies" into a military force under the charge of the Continental Congress. Along another and a vitally important line of action, the forces of the new nation were being truly nationalized; the functions of a new state were being acquired gradually by those whom the Philadelphia Congress represented, and in the process the powers of the provincial government were subjected, willingly it might be, to essential limitations. This change was of importance primarily from a military point of view, but its effect upon the national state then in process of formation is not to be under-estimated. With reference, however, to Massachusetts the change indicated was made clear and its importance plain by the appearance in the province of the newly appointed head of the "continental" army, and by his assumption of full charge of the forces operating against the royal troops. Thereafter

<sup>1</sup> *Journal of the Provincial Congress*, 224.

the work of the Provincial Congress, and of the subsequent General Courts, was directed to the formation, equipment, and subordinate regulation of its quota in the new army; its position as the head of an independent military state disappeared virtually in its willing and expedient surrender of authority to the power above.

### § 3. *The Committee of Safety*

Provision was made for the transaction of a part of the administrative business devolving on the Congress, by the appointment of a Committee of Safety<sup>1</sup> whose term of office, significantly, was to continue "until the further order of this or some other congress or house of representatives of the province;" and whose duty, in the official words, it was "most carefully and diligently to inspect and observe all and every such person and persons, as shall, at any time, attempt or enterprise the destruction, invasion, detriment or annoyance of this province, . . ." In their hands was placed, then, the protection of the property and the maintenance of the security of the commonwealth, as well as the charge of the supplies for defence and the direction of those members of the commonwealth who chose to enter the military service of the Congress. And from the recognition either of the incompleteness of their own authority or of the urgency of the situation, it was deemed proper that the Congress should "most earnestly recommend to all the officers and soldiers of the militia in this province, who shall, from time to time, during the commission of the said committee, receive any call or order from the said committee, to pay the strictest

<sup>1</sup> It consisted of nine members, three from Boston, and six "gentlemen of the country." The Boston members were Hancock, Dr. Warren, and Dr. Church. Among the others were Norton Quincy and Devens. October 27, 1774. *Journal of the Provincial Congress*, 35. On October 29, Mr. Pigeon and Capt. Heath were added to this committee. *Ibid.*, 48.

obedience thereto, as they regard the liberties and lives of themselves and the people of this province."<sup>1</sup>

Such a body was also created by the second Provincial Congress,<sup>2</sup> February 9, 1775, with powers practically the same as those of the earlier committee,<sup>3</sup> although increased by the provision that it was their duty "most carefully and diligently to inspect and observe all and every such person and persons as shall at any time attempt to carry into execution by force," either the "regulating act" or the act for the impartial administration of justice in Massachusetts. Some weeks later, on May 3, a committee of five, including Col. Warren, was appointed "to overlook the commission of the committee of safety, and . . . to see whether it be necessary that they be invested with other powers than they now have."<sup>4</sup> On May 17,<sup>5</sup> this committee was directed to

<sup>1</sup> *Journal of the Provincial Congress*, 32. Five was established as a quorum of the committee; of the five only one should be an inhabitant of Boston.

<sup>2</sup> Of eleven members, Jabez Fisher was in the place of Norton Quincy; otherwise the committees of the two congresses were identical. *Ibid.*, 89. Quincy had offered his resignation on February 7, and Fisher had been elected February 8. The committee of safety, as such, was recognized as continuing in existence after the dissolution of one congress and until after, as well, the organization of another congress; it seemed essential, however, that each newly elected congress should sanction the smaller executive body by stating and confirming its powers. As to Quincy, *cf.* John Adams, *Familiar Letters*, 179, 184.

<sup>3</sup> April 23, 1775, Messrs. Sullivan, Whitcomb, Durant, and Col. Cushing were added to the committee of safety. *Journal of the Provincial Congress*, 148.

<sup>4</sup> *Ibid.*, 185. On May 12, Mr. Sullivan was put on the committee in the place of Dr. Holden, absent. *Ibid.*, 218. On May 17 Mr. Sullivan was excused from serving, and Col. Foster and Deacon Fisher were added to the committee. *Ibid.*, 235.

<sup>5</sup> It was on this day also that the Committee of Safety appointed Dr. Church and two others to request of the Provincial Congress "that forthwith the duty of the committee of safety be precisely stated, and that said committee be empowered by Congress to conduct in such manner as shall tend to the advantage of the colony; and to justify the conduct of said committee, so far as their proceedings are correspondent with the trust imposed in them; and to inform the Congress that until the path of their duty is clearly pointed out, they must be at a total loss how to conduct, so as to stand justified in their own minds, and in the minds of the people of this colony." *Ibid.*, 550, 551.

report promptly;<sup>1</sup> and on the succeeding day the Congress balloted for a new Committee of Safety of thirteen members.<sup>2</sup> On May 19 this choice was incorporated in the revised form of commission and the whole thus sanctioned by the formal action of the Congress.

The newly stated powers of the committee included the authority to issue commissions to the officers of regiments that might be completed in the approaching interim between two Congresses; they included also the authority to summon and direct the militia and, further, to control "the army of this colony," "provided always, that it shall be in the power of this, or any future congress, to control any order of the said committee of safety, respecting this or any other matter."<sup>3</sup> Thus they aimed, in view of the "particular exigencies of the colony," to make the committee's commission "as concise and explicit as possible . . ." The men now appointed<sup>4</sup> were to serve "until some further order of this, or some future congress or house of representatives of this colony shall revoke their, or either of their appointments."

<sup>1</sup> On May 9, 1775 the Committee of Safety voted that, "as the circumstances of this colony are very different from what they were at their first appointment, the committee would represent to the Congress, that they apprehend it is necessary, that the whole of their duty may be comprised in a new commission." *Journal of the Provincial Congress*, 539, 540.

<sup>2</sup> Of these, 9 had been among the 11 elected, February 9, 1775. The two others then chosen, Messrs. Wm. Heath and Jabez Fisher, and the four added, April 23, 1775, Messrs. Sullivan, Durant, Col. Cushing and Col. Whitcomb do not appear on the present list. The four new names are those of Benj. Greenleaf, Nathan Cushing, Samuel Holten, and Enoch Freeman. *Ibid.*, 89, 148, 238.

<sup>3</sup> *Ibid.*, 240-242. The preamble of these instructions gives a list of sixteen men who had thitherto, for longer or shorter periods, been members of the committee of safety. The quorum was again fixed at five.

<sup>4</sup> It was on June 6, during the service of these men, that the Congress called Benjamin Edwards to the bar of the house to explain his use of the following language: "By God, if this province is to be governed in this manner, it is time for us to look out, and 'tis all owing to the committee of safety, a pack of sappy-head-fellows. I know three of them myself." *Ibid.*, 301.

Between the second and third Congresses there was slight interval of time and little change of personnel, so that the committee had no dangerous interim to face, although it had regularly to contend with a thoroughly trying condition of affairs, extending over crises both in the contest of arms and in the internal development. The powers given this committee on May 18 were, on July 13, declared null, when a committee of five,<sup>1</sup> appointed "to revise and explain the commission of the committee of safety" made its report. This was immediately accepted, and included the re-appointment of the eleven committeemen chosen in May.<sup>2</sup> These men now were given full power, at any time during the recess of the Congress, to call together "in the shortest and most effectual manner," if they should judge it necessary, a quorum of at least forty members of the Congress. The committee were empowered to appoint the place of meeting, and were "strictly enjoined to notify such members as may be most expeditiously assembled." They were further given the power, "until the thirtieth day of July instant, or until their commission shall be abrogated by the representative body of the inhabitants of this colony," to summon the militia, either upon the application of the ranking officer in Massachusetts of the continental army, or upon their own judgment that the safety of lives and property required such a step. For a similar period they were empowered to employ and supervise armorers and other artificers sufficient for

<sup>1</sup> Appointed on the morning of July 13, they reported in the afternoon of the same day. Two days earlier a committee of three had been appointed "to enlarge the commission of the committee of safety." *Journal of the Provincial Congress*, 498, 490.

<sup>2</sup> Of the lists of committeemen accepted October 27, 1774, February 9, 1775, May 18, 1775, and July 13, 1775, each of the four had included the following seven names: Hon. John Hancock, Dr. Benj. Church, Col. Azor Orne, Mr. Richard Devens, Col. Joseph Palmer, Capt. Benj. White, and Mr. Abraham Watson. It should be stated that Dr. Jos. Warren was a member of the committee until his death.

the Massachusetts quota of the continental army. They were authorized to execute all commissions and services to which, during the current session, they had been appointed and which remained uncompleted. To them was entrusted the care of the poor from Boston and Charlestown. The quorum was retained at five. Finally, for the period already stated, they were given the inclusive power "to receive, examine, and discharge, or cause to be confined, according to their wisdom, any person or persons taken captive, that may properly come under the cognizance of the representative body of this people, and to receive, and duly secure, any interests, or effects, the conduct whereof is not already provided for, that shall be at the disposal of this colony." With such powers<sup>1</sup> the Committee of Safety entered the last period of its existence, this final fortnight of its work embracing the closing week of the Provincial Congress and the opening of the new General Court, a fortnight, however, of the proceedings during which even scant records are lacking.

From November, 1774, to July, 1775, this body served as an effective representative of the Congress in the exercise of functions of a most important type.<sup>2</sup> To it was relegated a large portion of the routine and detail connected with the maintenance and supervision of a military force. The initiation of steps of belligerency and of internal organization preparatory thereto rested with the Congress; the direction of many such movements, however, devolved upon the smaller body. By it, as well, was supervised the activity incident to the completion of such processes; for such supervision it remained in service and held meetings both during the sessions of the Congress and in the intermediate periods; and it attained greater working efficiency through the arrangement by which its meetings often partook of the

<sup>1</sup> This commission is in *Journal of the Provincial Congress*, 498, 499.

<sup>2</sup> The journals of this body are printed in *ibid.*, 505-597.

nature of a joint conference of members of the Committee of Safety and members of such committees as that of supplies.<sup>1</sup> Much of the committee's energy necessarily was devoted to procuring and properly distributing the military and other supplies of the province. Pork and pick-axes, bell-tents and shells, medicine, mortars, and powder received indiscriminately the minute attention of the committee. The equipment of an army was no slight task; and the accomplishment of that alone would suffice to prove that this body was an important factor in the transition, although in itself not connected with the constitutional development.

It is unnecessary to offer more than a characterization of the greater part of the committee's work. That its activity, however, was not wholly of a subordinate nature is made plain even by a few of its acts relative to the military situation. Thus, on February 23, 1775, Dr. Church, Mr. Gerry and John Pigeon, were appointed "to draft a letter to the commanding officers of the militia, and the commanding officers of the minute men . . . to assemble one fourth part of the militia through the province on the receipt of this letter."<sup>2</sup> Further typical action is seen during the month of April. Then it was ordered that the supply of cannon powder at Leicester be removed, 'one load at a time,' to Concord, and there 'made into cartridges, under the direction of the committee of supplies.'<sup>3</sup> Soon thereafter the transportation of four six-pounders to Groton and of two brass mortars to Acton was ordered.<sup>4</sup> On April 18 the

<sup>1</sup> Cf. *Journal of the Provincial Congress*, 505, 506, 507, *et seq.* Cf. *ibid.*, 515: "Voted, That when these committees adjourn, it be . . . ."

<sup>2</sup> *Ibid.*, 510. It was directed that one hundred copies of such a letter should be printed, as well as two hundred copies of the resolve of Congress granting the committee power to assemble the militia.

<sup>3</sup> *Ibid.*, 514. This is entered as of Saturday, April 14; it would seem, however, that Saturday was April 15.

<sup>4</sup> April 17. *Ibid.*, 515.

work of the two committees was especially characteristic and significant, for on that day, meeting at Menotomy instead of at Concord as immediately before, they appointed nine towns<sup>1</sup> in which all the ammunition of the province should be deposited, and named six towns<sup>2</sup> which should each be the station of an ammunition cart and of a company of matrosses. The action of the fourteenth relative to the transfer of powder was reconsidered; the removal from Concord of a portion of the provisions there, including flour, beef, rice, molasses, rum, and candles was directed; and it was also determined that a considerable supply of larger ammunition should be transferred from Stoughtonham to Sudbury. The distribution of supplies in anticipation of a contest on the field consisted chiefly in a removal to places of greater security of the larger portion of the materials at Concord.<sup>3</sup> The redistribution of supplies extended to shovels and canteens, as well as to cannon, tents,<sup>4</sup> and medicine chests.<sup>5</sup> Finally, it was voted "that the musket balls under the care of Col. Barrett, be buried under ground, in some safe place, that he be desired

<sup>1</sup> Worcester, Lancaster, Concord, Groton, Stoughtonham, Stow, Mendon, Leicester, and Sudbury. *Ibid.*, 516.

<sup>2</sup> Worcester, Concord, Stoughtonham, Stoughton, Stow, and Lancaster. *Ibid.* It was also voted that Worcester, Concord, Stow and Lancaster should each be provided with two three-pound cannon. *Ibid.*, 517.

<sup>3</sup> Thus it was ordered that of the spades, pick-axes, bill-hooks, shovels, axes, hatchets, crows, and wheelbarrows at Concord, one-third should be left at Concord, one-third placed at Sudbury, and one-third at Stow. Further, of two thousand iron pots, two thousand wooden bowls, and fifteen thousand canteens, one-half of each should be placed at Worcester, one-fourth at Concord, and one-fourth at Sudbury. *Ibid.*, 517.

<sup>4</sup> It was ordered that eleven hundred tents be equally distributed among the towns of Worcester, Lancaster, Groton, Stow, Mendon, Leicester, and Sudbury. *Ibid.*, 518.

<sup>5</sup> Of the medicine chests it was ordered that two each should be placed in Concord, Groton, Mendon, Stow, Worcester, and Lancaster, and three in Sudbury, the cases in each instance being kept in different parts of the town. *Ibid.*, 517. Cf. Shattuck, *History of Concord*, 97-99.

to do it, and to let the commissary only be informed thereof."<sup>1</sup> The weights and measures were committed to the keeping of the commissary, and the papers belonging to the two committees were "lodged with Mr. Abraham Watson." Thus was careful preparation made for the event of the nineteenth of April.

By that event the situation was materially changed. Such change, in the view of the committee, "made it absolutely necessary, that we immediately raise an army to defend our wives and children from the butchering hands of an inhuman soldiery," who were eager "to ravage this devoted country with fire and sword." Thus they addressed the several towns in a circular letter; and therein they continued: "We conjure you, therefore, by all that is sacred, that you give assistance in forming an army. Our all is at stake. Death and devastation are the certain consequences of delay. . . . We beg and entreat, as you will answer to your country, to your own consciences, and above all, as you will answer to God himself, that you will hasten and encourage by all possible means, the enlistment of men to form the army, and send them forward to head quarters at Cambridge, with that expedition, which the vast importance and instant urgency of the affair demands."<sup>2</sup> On the day thereafter, April 21, they passed a resolution for the immediate enlistment from the Massachusetts forces, of eight thousand effective men to serve for seven months, "unless the safety of the province will admit of their being discharged sooner; . . ."<sup>3</sup> Thereafter, the more obvious history of the Revolution was the military history, and throughout this the presence of the Committee of Safety was seen. Thus a fortnight later,<sup>4</sup> when news was received that British transports from England had just arrived at Boston, a com-

<sup>1</sup> *Journal of the Provincial Congress*, 517.

<sup>2</sup> *Ibid.*, 518.

<sup>3</sup> *Ibid.*, 520.

<sup>4</sup> May 4, 1775; *Ibid.*, 538.

mittee of three was appointed to confer with the council of war. Five days later the council of war having determined that an addition of two thousand to the army at Roxbury was necessary, "and that, if possible, the reenforcement be brought into camp the ensuing night;" the Committee of Safety ordered the commanding officers in ten towns<sup>1</sup> that they should "immediately muster one-half of the militia, and all the minute men under their command, and march them forthwith to the town of Roxbury, for the strengthening of the camp there."<sup>2</sup> Over the provincial army, thus, they exercised a control that extended even to the establishment of the soldier's rations,<sup>3</sup> a control which, however important in itself for the time being, was soon to be radically modified, as elsewhere suggested, by the rearrangements through which to a large extent the military functions of the Provincial Congress were abrogated.

#### § 4. *Economic Affairs*

The Provincial Congress naturally strove to secure within Massachusetts a strict and uniform observance of the continental "association." Locally, thus, it took the lead in the commercial warfare; but it went still farther and directed the general conduct to such an end that the colonists might for the future have commercial independence of the mother country, whatever might be their political relations. The

<sup>1</sup> Dorchester, Dedham, Newton, Watertown, Waltham, Roxbury, Milton, Braintree, Brookline, and Needham. *Journal of the Provincial Congress*, 540.

<sup>2</sup> *Ibid.*, 540.

<sup>3</sup> Thus, June 15, 1775, it was voted to allow each man in the Massachusetts army daily: one pound of bread; one pint of milk or one gill of rice; one quart of "good spruce or malt beer;" one gill of peas or beans, "or other sauce equivalent;" and a stated amount of beef and pork, or of beef alone, with a weekly allowance of fish. There was also a weekly allowance of a half pint of vinegar "if it can be had," and of six ounces of "good butter" to each man, as well as "one pound of good common soap for six men per week." *Ibid.*, 568.

men of the Congress began early to lay deep the foundations of future welfare. They could not neglect the economics of the situation, but appointed two committees whose work was significant. The one was to make "as just an estimate as may be of the loss and damage of every kind" that came "to the province by the operation of the Boston port bill and the act for altering the civil government, from their commencement to this time."<sup>1</sup> The other was directed "to state the amount of the sums which have been extorted from us since the year 1763, by the operation of certain acts of the British parliament."<sup>2</sup> On the day preceding this action a committee of seven was appointed "to take into consideration the state of the manufactures, and how they may be improved in this province."<sup>3</sup> Certain elements of economic weakness they thus perceived and it was their purpose to avoid as far as possible the greater injuries incident to the commercial contest already begun, and to the contest of arms then becoming increasingly probable. A further preliminary step was the effort to ascertain the resources of the province through a plan formed by the Adamses and Colonel Danielson. On the same day<sup>4</sup> one man from each county and one from each maritime town were appointed whose duty it was "to prepare from the best authentic evidence which can be procured, a true state of the number of the inhabitants, and of the quantities of exports and imports of goods, wares, and merchandize, and of manufactures of all kinds, within the colony, . . ."<sup>5</sup> While primarily for the information of the Continental Congress, the mere collection of such information must have afforded practical assistance and incentive to those who were directing the legislation of the Provincial Congress.

<sup>1</sup> *Journal of the Provincial Congress*, 52. This Committee made a report, February 10, 1775; "the report was ordered to be filed." *Ibid.*, 95.

<sup>2</sup> *Ibid.* 52.

<sup>3</sup> November 28, 1774. *Ibid.*

<sup>4</sup> December 7, 1774.

<sup>5</sup> *Ibid.*, 61.

With equal promptness, however, on the day after the action just outlined, the members of the first Congress put themselves on record by accepting a suggestive and significant report submitted by the committee on manufactures.<sup>1</sup> Although merely a series of recommendations to their constituents, the action illustrates plainly the condition of the province and the policy of its leaders. The preamble of their resolutions suggests that "the happiness of every political body of men upon earth, is to be estimated, in a great measure, upon their greater or less dependence upon any other political bodies;" internal economic weakness may readily entail political subjection to another body. To prevent "so great an evil, more to be dreaded than death itself, it must be the wisdom of this colony at all times, more especially at this time, when the hand of power is lashing us with the scorpions of despotism, to encourage agriculture, manufactures, and economy, so as to render this state as independent of every other state as the nature of our country will admit; . . ."<sup>2</sup> The solution of the problem thus stated is begun by a series of recommendations covering a wide field and showing certainly an ambition for economic independence. Thus, first of all, the people are urged to "the improvement of their breed of sheep, and the greatest possible increase of the same; and also the preferable use of our own woollen manufactures;"<sup>3</sup> and this is followed by similar remark on the raising of flax and hemp. Even the making of nails and the manufacture of saltpetre, "an article of vast importance," and likewise the manufacture of gun powder, of steel, and of tin plate is strongly recommended. Gunlocks, salt, glass, paper, madder, buttons, and wool-combers' combs, are brought to the public notice as proper objects for an expanding industry. In connection with the paper pro-

<sup>1</sup> December 8, 1774. *Journal of the Provincial Congress*, 62-65.

<sup>2</sup> *Ibid.*, 63.

<sup>3</sup> *Ibid.*, 63.

duct "a careful saving and collection of rags" is suggested, and a bit of bold economic legislation is attempted when they recommend "that the manufacturers give a generous price for such rags. . . ." The "encouragement of horse-smiths in all their various branches" is said to be of "public utility," and a further proposition is the "preferable use of the stockings and other hosiery wove among ourselves so as to enlarge the manufactories thereof, . . ." The establishment of societies in arts and manufactures is indicated as a means of making more effective these resolutions, which are concluded with the advice, already suggested in another connection, that the people "make use of our own manufactures, and those of our sister colonies, in preference to all other manufactures."<sup>1</sup> Economic self-defense was thus crudely begun.

Subsequently, in answer to the petition of Messrs. Boice and Clark,<sup>2</sup> who had "at a very considerable expense," erected paper works at Milton and who were unable to obtain a "sufficiency of rags to answer their purpose," it was resolved especially to urge "every family in this province, to preserve all their linen, and cotton and linen rags," and it was "also recommended to our several towns, to take such further measures for the encouragement of the manufacture aforesaid, as they shall think proper."<sup>3</sup> Likewise, soon thereafter,<sup>4</sup> an equally significant step was taken when the Congress adopted such portions of a report<sup>5</sup> as provided that

<sup>1</sup> *Journals of the Provincial Congress*, 65.

<sup>2</sup> February 8, 1775; *Ibid.*, 88.

<sup>3</sup> February 9, 1775; *Ibid.*, 94. On May 16, 1775, on a report from Col. Barrett that a prisoner at Worcester was a paper maker, the committee of safety resolved that the prisoner should be removed to Boice's paper mill at Milton. *Ibid.*, 549.

<sup>4</sup> February 15, 1775. *Ibid.*, 100.

<sup>5</sup> The committee was appointed February 13, 1775, and consisted of Stephen Hall, Dr. Warren, and Mr. Browne of Abington. *Ibid.*, 98.

there should be appointed a committee "to draw up directions, in an easy and familiar style, for the manufacturing of saltpetre, and that the same be printed and sent to every town and district in this province, at the public expense."<sup>1</sup> The step was made effective by the guarantee of the Congress to purchase at a stated price all the saltpetre manufactured in the province during the subsequent twelve months.<sup>2</sup> To develop this line of manufacture, a delegate was sent to New York to secure full information regarding the manufacture of saltpetre, and to engage the services of an expert in that work.<sup>3</sup> Similar encouragement was given to the American manufacturers of fire arms and bayonets, when the Congress resolved "to give the preference to, and purchase from them, so many effective arms and bayonets as can be delivered in a reasonable time, upon notice given to this Congress at its next session."<sup>4</sup> On many such lines the Congress expanded the normal functions of a legislative body in its effort to develop the resources of the province to such a point that political self protection and economic independence would be equally possible and permanent.

### § 5. *Public Finance*

The supremacy of the Provincial Congress and its early claim of some permanence were manifested by nothing more plainly than by the attitude and action of the Con-

<sup>1</sup> *Journal of the Provincial Congress*, 100.

<sup>2</sup> This function of the Congress to guarantee, in various ways, private investments in enterprises of public benefit, is well illustrated in other colonies. Cf e.g.: *Journals of the Provincial Congress of New York*, Albany, 1842, I., 349, 365. 4 *American Archives*, III., 209-211; IV., 72; V., 1336-1338; V., 1560; VI., 1469. *Proceedings of the Convention of Virginia* [of March 1775], Richmond, 1816, 7, 8. *Proceedings of the Convention of Virginia* [of July 1775], Richmond, 1816, 61, 62.

<sup>3</sup> *Ibid.*, 417, 418, 421, 423.

<sup>4</sup> *Journal of the Provincial Congress*, 103.

gress upon matters of public finance. It has been seen already that after three weeks of preliminary work the Congress had taken into its immediate control the financial system of the province, and had appointed a provincial treasurer and receiver-general who should supersede the royal appointee. Having created at the head of this important department an official who recognized no superior except the Congress, the efforts of that new representative body were thoroughly and promptly endorsed by the towns throughout the province. By these recognition was accorded the new treasurer, and to him, if to anyone, the proper local payments were made. The constables in the towns, and the sheriffs in the counties, as well as the respective assessors and commissioners, acted under immediate responsibility to their various constituencies, and in direct obedience to them. Above these officials all persons connected with the financial administration of the province were appointed and directed by the Provincial Congress. Thus quickly, and without disturbance, the new power gained control of what might well be made its greatest strength, and the loss of which was to become in every way a serious matter for the royal government, even though the mere loss of provincial revenue might easily be sustained, and the diverting of it to improper channels overlooked for a time. In this instance, however, there was slight indication that the diversion was temporary. It was quite otherwise; and the accompanying changes even of personnel were equally suggestive of a completere organization of government, with the recognition of new theories at its base and a new sovereign at its head.

Asserting thus early its control of the financial administration, the Congress proceeded promptly to exercise functions relative thereto and of equally deep significance. Thus, more than a week before Gardner was given his appointment, the Provincial Congress began the consideration of a

far more radical step, the appropriation of taxes assessed under the royal government. The committee, already noticed, "on the state of the province," reported, on October 20, a resolve "relative to the payment and collecting of the outstanding rates and taxes," which was read and recommitted.<sup>1</sup> The same committee, October 28, again reported such a resolve which at first was promptly accepted. This vote, however, was immediately reconsidered, and the resolve was referred for amendment to Major Hawley, Mr. Gerry, and Major Foster. Their report was promptly made, and the resolve forthwith adopted. In this was incorporated the earlier action of the same day, the election of Henry Gardner as provincial treasurer. The duties of that officer were indicated in a general way, and recommendations were adopted urging the payment to him of all province moneys, and "that the like order be observed respecting the tax ordered by the great and general court at their last May session."<sup>2</sup> The recommendations of a body so formed could not be other than an expression of public opinion, and were for the people of the province law in everything but name. By such action at this time the Provincial Congress asserted, in part possibly by implication, that in itself alone rested the control of the provincial funds by whomsoever created,<sup>3</sup> and that by itself as well was acquired the functions of the earlier General Court, to levy and collect taxes as the legal representatives of the people. The position thus assumed was reaffirmed in December,<sup>4</sup> and the authority of the Provincial Congress in this

<sup>1</sup> *Journal of the Provincial Congress*, 23.

<sup>2</sup> *Ibid.*, 39.

<sup>3</sup> This is made plain even so late as April 25, 1775, when the Congress ordered the treasurer to make a statement concerning the finances of the province, and he answered "in a general way, that, for the year 1773, it was supposed that about £20,000 was due, and that he had received about £5,000." *Ibid.*, 151.

<sup>4</sup> December 9, 1774. *Ibid.*, 65.

matter seems to have been seriously questioned by none. Its officers were recognized as fully authorized to handle all province moneys.

Such funds, however, scarcely sufficed to meet even the preliminary expenses of a campaign still in the future. The effect of the policy of the "association" was naturally to decrease the supply of ready money; and whatever small amounts might be held by its self-sacrificing supporters could well be retained by them, during such uncertainty of government, without a conscious stifling of patriotism. Whatever were the causes, it was a striking, if unpleasant, fact that many towns were repeatedly, in cases perhaps even permanently, delinquent in the payment of provincial taxes. Nevertheless, the imperative need of more secure fortifications and of ampler military supplies rendered unavoidable, if submission were not to follow, an early and a large expenditure. The equipment and the support of an army, as well as the payment of volunteers, increased the cost of the new movement and made necessary the acquisition, by some means, of a fund of ready money.

The seriousness of the financial situation did not become evident until the time of the second Provincial Congress. The first Congress had appointed a committee "to collect the several expenses which have accrued to the Congress in this and a former session thereof," had accepted their report on the last day of their session, and then had easily disposed of the matter by ordering the receiver-general "to pay and discharge the several demands therein mentioned."<sup>1</sup> With the second Provincial Congress, however, the problems and the difficulties appeared. Thus, as early as February 7, 1775, when Dr. Warren and four associates were appointed to consider the accounts of the delegates to the recent Continental Congress and to report an allowance for their ex-

<sup>1</sup> *Journal of the Provincial Congress*, 72.

penses and services, they were directed "also to devise some method how the money shall be procured to discharge the same; and also how the money shall be procured to enable our present delegates appointed to attend the American Congress to refund their expenses."<sup>1</sup> A trivial matter thus suggested an important question, but for the time being a resort to any special method of money-raising was avoided.<sup>2</sup>

At the end of March the needs of the province were impressed upon the towns by the Provincial Congress in a hand-bill urging the immediate payment of public moneys still retained by negligent collectors and constables and expressing the desire of the Congress to complete "the preparations so essentially necessary to the public safety, without calling on them for other moneys, than such as are now due to the colony."<sup>3</sup> The possibilities did not really become immediate until after the events of April 19. The patriotic vote, passed soon thereafter, to raise an army of 13,600 naturally involved many contingencies. Of these, the most formidable was soon before the Congress; and on April 27, by special order of the day previous, the Congress took up the matter of supplying the treasury, and ordered that a committee of seven be chosen by ballot for reporting thereon.<sup>4</sup> The Rev. Mr. Murray, Col. Dexter, Mr. Gerry, and four others were, on April 29, named for this service.<sup>5</sup>

On May 3 a report was rendered and accepted. By this action the receiver-general was "empowered and directed" to borrow £100,000, "lawful money," and to issue in return securities of the colony bearing six *per cent.* interest, and payable June 1, 1777.<sup>6</sup> A form of security was adopted,

<sup>1</sup> *Journal of the Provincial Congress*, 87.

<sup>2</sup> The committee report was adopted February 10, and simply authorized the specified payments to be made to the men in question by the receiver-general, without any reference to any special means of raising the funds. *Ibid.*, 95.

<sup>3</sup> March 31, 1775. *Ibid.*, 113.

<sup>4</sup> *Ibid.*, 160.

<sup>5</sup> *Ibid.*, 169.

<sup>6</sup> It was provided, later in the day, that no note of less than £4 be issued. *Ibid.*, 186, 187.

and it was resolved that the Continental Congress "be desired to recommend to the several colonies to give a currency to such securities."<sup>1</sup> In a letter to the Continental Congress, adopted the same day by the Provincial Congress, the new financial step was spoken of as "the only measure which we could have recourse to for supporting our forces;" and their co-operation was asked "in rendering our measures effectual, by giving our notes currency through the continent."<sup>2</sup> On May 9, the receiver-general was directed "to give public notice of the resolve, lately passed by this Congress, for borrowing money on the credit of the colony, and assign certain time and place when he will attend that business."<sup>3</sup> Not long thereafter it became necessary for the Congress to appoint a special committee "to inquire where the treasurer may procure money for the muster masters to supply the soldiers with advance pay."<sup>4</sup> The situation, however, seems not to have improved, and on May 24 the Congress issued to the inhabitants of Massachusetts an address<sup>5</sup> dealing with this matter of a public loan. Reference was made to their readiness, already shown, "to supply, on the credit of the colony, many necessary articles for the use of the army," but the army needed a large supply of "every article necessary for the most effectual military operations," and if they should "fail herein, it may prove ruinous and destructive to the community, whose safety, under God, depends upon their vigorous exertions." They urge that all money "which you can spare from the necessary supplies of your families," be invested in the new six *per cent.* notes; and to possible lenders it is suggested "that there are now no ways of improving money in trade, and that there is the greatest probability, that the other colonies will give a ready currency to the notes, which will render them, in one respect

<sup>1</sup> *Journal of the Provincial Congress*, 185.

<sup>2</sup> *Ibid.*, 189.

<sup>3</sup> *Ibid.*, 207.

<sup>4</sup> May 18, 1775. *Ibid.*, 238.

<sup>5</sup> *Ibid.*, 255, 256.

at least, on a better footing than any notes heretofore issued in this colony." The appropriate moral plea was urged, and the prospect of ruin arising from "undue caution" was suggested; but it was all in vain. The efforts of the Provincial Congress to exchange its two year six *per cents.* for solid cash were of no avail; resources were not thus acquired, and of necessity a further step was taken.

The Provincial Congress now took an even bolder course, and aimed to supply for the province a paper currency, composed of the notes or bills of credit of the Congress, its promises to pay, issued not in return for a money loan, but, commonly, for services and supplies. Thus, on May 15, 1775, a committee was appointed to report a resolve "for supplying the soldiers with two twenty shilling bills each, for a month's advance pay;"<sup>1</sup> and five days thereafter the Congress resolved that the receiver-general should issue, on the credit of the colony and for the advance pay of the Massachusetts army, notes in denominations ranging from six to twenty shillings and in total amount not exceeding £26,000.<sup>2</sup> The notes were to be dated May 25, 1775, and were to be payable May 25, 1776, with six *per cent.* interest. On the face of the notes it was stated that they were to be received in all payments at the treasury, and this was reinforced by the resolution of the Congress that the notes "shall be received in all payments in this colony, and no discount or abatement shall be made thereon, in any payment, trade, or exchange whatsoever." This policy, then, adopted in the closing days of the second Provincial Congress, may explain in part the position of the Congress and its exercise of powers. In a similar way, after two preliminary votes,<sup>3</sup> a committee report was adopted, July 7, 1775, providing for the issue of £30,000 in bills of credit of small de-

<sup>1</sup> *Journal of the Provincial Congress*, 228.

<sup>2</sup> *Ibid.*, 246.

<sup>3</sup> Of June 30 and July 6.

nominations, to pay those who had "supplied small articles" and had been "employed in the service of this colony, . . ."<sup>1</sup>

Creating thus a provincial currency, the Congress went still further in adding to the amount of circulation thus secured the paper currency of the other colonies. Thus after considerable preliminary discussion<sup>2</sup> it was ordered<sup>3</sup> that the paper notes of all the allied colonies should, at specified rates, be a "good and sufficient tender for the payment of all debts," and should "be received into the public treasury of this colony without any discount or allowance whatever." The element of depreciation had already attracted much attention,<sup>4</sup> and any one who even asked a discount or a premium in connection with any of the paper in question was to be "deemed an enemy to the country," and all local committees were enjoined to discover and report all such opponents of the Congress, that either that body or the subsequent assembly might "take order thereon as to them shall seem meet." This legislation was continued on July 1,<sup>5</sup> when the Congress directed the receiver-general to pay all orders or drafts upon the treasury, unless specifically calling for silver or gold, in such notes or bills of credit of the other colonies as were, by the earlier act, made receivable at the public treasury.

The Committee of Safety had already assumed the power to expand further the currency of the province when helpers from Rhode Island and Connecticut came to Massachusetts supplied only with the paper currencies of their respective colonies. It was then resolved, May 1, 1775, that thereafter the paper currencies of those two colonies should be received in all payments in Massachusetts, at the same rate as in the colony of issue.<sup>6</sup> At the same time tentative con-

<sup>1</sup> *Journal of the Provincial Congress*, 464, 465.

<sup>2</sup> Cf. *Ibid.*, 299, 300, 301, 305, 320, 410.

<sup>3</sup> June 28, 1775; *Ibid.*, 415, 416.

<sup>4</sup> Cf. *Ibid.*, 300.

<sup>5</sup> *Ibid.*, 437.

<sup>6</sup> *Ibid.*, 530.

sideration was given to the possibility likewise of making the paper currencies of all colonies receivable for all debts, private as well as public. The nature of the situation, however, had been defined; and the complete control of the Provincial Congress, and of its Committee of Safety, over provincial finance had been successfully asserted.

It is hardly necessary to add that the exercise of powers so important was accompanied by the direct and complete control of the less important branches of provincial finance. Minor contracts, subsidies, salaries, even in detail, came under the immediate action both of the committee and of the Congress. Official bonds, vouchers, and claims came within their cognizance. The process and the control both of the acquisition and of the disposal of public funds, and the many minor powers incident thereto, figured among the recognized functions of the Provincial Congress.

#### *§ 6. Relations with the Continental Congress*

The position of the Provincial Congress can be further defined by a review of its relations with the Continental Congress and of its attitude relative to intercolonial affairs. As already stated, the call for the first Continental Congress had issued from the house of representatives at Salem in the preceding June. By the same body the delegates of Massachusetts had been appointed, and by it, as well, had provision for their expenses been made. The delegation thus appointed had joined without hesitation in the deliberations of the Congress at Philadelphia. They there met delegates appointed by a general assembly, others appointed by a house of representatives, still others named by a provincial convention, by a provincial committee, or by an even less authoritative and representative constituency.<sup>1</sup> The pecu-

<sup>1</sup> Cf. "The Censor," March 5, 1776, "To the Apologist:" "Look around you, and you will see Delegates in Congress . . . whom the free choice of the people

liarity of the situation was shown further in the indiscriminate manner in which, in the proceedings of the continental body, an assembly, a convention, a congress, or a committee was recognized as the representative of the population occupying the territory of what had been, and was still for a time a province. The course of the Massachusetts delegation was characteristic. They had been appointed by one body of legislators, meeting under royal authority; they reported, apparently with little question of the propriety of their action, to a distinct body, called with the sanction of the towns and acting as their responsible representative, although a body in its assumptions nothing less than revolutionary. In the Provincial Congress, November 24, 1774, it was resolved: "That the chairman of the committee from this province who were members of the Continental Congress, be desired to report the proceedings of said Congress."<sup>1</sup> Accordingly the chairman of this committee "appointed by this province," at once reported "that they had attended that service; that the Congress had taken into consideration the state of the colonies, and that he had a journal of their whole proceedings, which he would lay on the table." The proceedings of the Philadelphia body were then read, and the declaration of rights, the statement of grievances, and the "association" were referred to a committee of seven,<sup>2</sup> including the Warrens, Hawley, and Gerry. The committee thus appointed reported December 1, but the report was subjected to amendment, and was not adopted until December 5, when in it was incorporated the result of further action by the Congress.

On November 30 the question before the Congress as fixed

would not admit in our Committee of Inspection, not to say into the House of Assembly."<sup>3</sup> 4 *American Archives*, V., 72. Cf. *Ibid.*, I., 893-898, 900, 901, 906; II., 1820-1824.

<sup>1</sup> *Journal of the Provincial Congress*, 49.

<sup>2</sup> *Ibid.*, 50.

by vote of the preceding day, was the expediency of adopting the recommendation of the recent Continental Congress for the appointment of a second similar body to meet at Philadelphia, May 10, 1775. An affirmative response was given, and the size of the delegation was fixed at five;<sup>1</sup> two days later the election was held.<sup>2</sup> This choice was reaffirmed on December 5, when in connection with a hearty endorsement of the continental "association" and declaration of rights, the powers of the new delegation were stated as being "to concert, direct, and order such further measures as shall to them appear to be best calculated for the recovery and establishment of American rights and liberties, and for restoring harmony between Great Britain and the colonies."<sup>3</sup>

The first Provincial Congress also appointed a committee to determine what allowance for services and expenses should be made to the delegates to the Continental Congress of September, thus presuming, in an important matter, to assume the responsibilities of the royal house of representatives.<sup>4</sup> In the address issued to its constituents shortly after, on December 10, the Congress recognized that the Continental Congress had over the Provincial Congress such authority as the latter exercised over the towns.<sup>5</sup> Thus plainly did the first local congress accept the situation, and such it had by implication done even before it had taken any of the steps mentioned in this review. So early, indeed, had it felt the desirability of gaining approbation at Philadelphia, that on October 29 the Congress had requested

<sup>1</sup> *Journal of the Provincial Congress*, 53.

<sup>2</sup> The delegation consisted of John Hancock, Thomas Cushing, Samuel Adams, John Adams, and Robert Treat Paine. *Ibid.*, 55.

<sup>3</sup> *Ibid.*, 57. This report was ordered published for distribution to all towns and districts in the province. *Ibid.*, 58. Cf. *Ibid.*, 66.

<sup>4</sup> Such a committee was appointed December 7, 1774. *Ibid.*, 61.

<sup>5</sup> *Ibid.*, 71.

the Committee of Safety "to write to the Continental Congress, showing them the grounds and reasons of our proceedings, and enclose them a copy of our votes and resolutions."<sup>1</sup> Such an act, while in itself not connected with the important events which occurred later, nevertheless suggests in a crude form their conception of the relation of the two bodies in question. This conception was developed and defined by the first Congress in the action indicated; it was more strikingly prominent during the period of the second Congress.

That body, on April 12, resolved that a committee of correspondence should be appointed in each county, whose duty it should be to receive from the various town committees their reports on the execution of the continental and provincial plans;<sup>2</sup> it later, in its address to the people of Great Britain, took occasion to explain its steps therein by the fact that the Continental Congress was not in session and that an early account was necessary;<sup>3</sup> and not long after the skirmish at Lexington it appealed to the body about to meet at Philadelphia "with the most respectful submission, whilst acting in support of the course of America, to request the direction and assistance of your respectable assembly."<sup>4</sup> The appeal was significant; it was accompanied by copies of the address to the people of Great Britain, of the letter to the agent, Franklin, and of the depositions relative to the events of April 19. The creation of a provincial debt was explained, the military exposure of the province was emphasized, and insistence was placed upon the need of a powerful American army "as the only mean left to stem the rapid progress of a tyrannical ministry."<sup>5</sup> Of the creation of a provincial force they say, "The sanguinary zeal of the ministerial army, to ruin and destroy the inhabitants of this colony, in the

<sup>1</sup> *Journal of the Provincial Congress*, 42.

<sup>2</sup> *Ibid.*, 139.

<sup>3</sup> April 26, 1775. *Ibid.*, 154.

<sup>4</sup> May 3, 1775; *Ibid.*, 187.

<sup>5</sup> *Ibid.*, 188.

opinion of this congress, hath rendered the establishment of an army indispensably necessary." The raising of a provincial army without reference to the continental body was significantly explained when they said that the "sudden exigency of our public affairs precluded the possibility of waiting for your direction in these important measures; . . . ."

The development of their relations in the domain of military affairs has been indicated already; in the succeeding section some attention will be given to the relations of the Provincial and Continental Congresses in the matter of governmental reform. It is upon these two points that the relations of the two bodies were especially significant and typical as illustrating the manner in which the Provincial Congress consciously acted upon the assumption that its authority was less than that of the continental body, and that its acts were to be strictly subordinated to those of that assembly. It was a subordination, to be sure, based strictly upon the recognition of advice and recommendations, but it was made effective, nevertheless, through that agreement of interests and unity of plan which gave to advice the force of command. It must be recognized, furthermore, that such subordination, in the months of which we are speaking, was expedient and even essential to success; that such a situation was recognized by the colonists, and that, in consequence, the relations of provincial and continental bodies were far different in the early years of Henry's "all American" enthusiasm from what they were even a few years after the beginning of warfare. Naturally, such reaction against centralization had not appeared during the months of the Provincial Congress, so that the description of its relations with the Continental Congress needs no qualification respecting the degree of subordination. The completeness of this supremacy of the new national body might be readily emphasized by carefully

tracing its activity along less important lines and in regard to various matters of detail. Consideration of such, however, would afford little of special significance, and would serve merely to furnish additional illustration of the nature of the relations already indicated.

### § 7. *The Change of Government*

The Provincial Congress was, above all, an expedient. Its mission was purely temporary, and its course was accompanied by repeated efforts towards a permanent organization of government. That it was at no distant time to be superseded by another representative body, the members of the Congresses themselves realized; throughout their work they recognized the supreme authority of the people and their own transitory and dependent position. The occasion of the first Congress, its basis, organization, and the exercise of powers by itself and its successors, have been indicated. The further development necessitates some statement of the series of events which ended with the disappearance of that body. It must be borne in mind that, even during the summer of 1774, proposals had been made to establish as the constitution of the rapidly developing commonwealth the old colonial charter of the seventeenth century.<sup>1</sup> Other, and

<sup>1</sup> Cf. Petersham letter, April 3, 1773; *Revolutionary Corresp.*, III., 603, Bancroft Collection.

Cf. Joseph Warren, Boston, September 12, 1774, to Samuel Adams: "Many among us and almost all in the western countys are for taking up the old Form of Government according to the first Charter." *Autograph Letters of Joseph Warren*, Bancroft Collection. The letter is printed, with slight alterations, in Frothingham, *Life of Warren*, 375, 376.

Thomas Young, Boston, September 4, 1774, to Samuel Adams, Philadelphia: "By all our advices from the westward the Body of the people are for resuming the old Charter, and organizing a government immediately. . . . Major Hawley is so strongly convinced of the necessity of resuming the Old Charter that he declares that if the four New England Governments alone adopt the measure he will venture his life to carry and defend it against the whole force of Great Britain, in case she resents it." *Adams Papers*, Bancroft Collection.

more numerous, suggestions had been to the effect that the people should take as their frame of government the provincial charter of 1691, suitably modified to meet the requirements of the new constitutional relations.<sup>1</sup> The need of prompt and effective action rendered it scarcely feasible, if not, indeed, unwise, to attempt suddenly to subject a revolutionary body to a constitution that would impose the formalities and restraints of peaceful conditions. The difficulties of such a step were increased by the strong influence exercised over the popular mind by the "natural rights" philosophy and by the trend toward a "state of nature." Heightened individualism and a morbid craving for some tangible experience of this blessed "state of nature" precluded, until that state had been approached, all possibility of a higher type of organization. Once reduced, in the months of the Provincial Congress, to the crudest forms of administration which were safely applicable, both leaders and people consciously recognized the need of a basis of government more truly adapted to the population. Toward such there appeared a distinct effort, and the result was the successful termination of the strictly transitional period through the adoption of an element which was lacking in the character of the Provincial Congress, that of a written instrument as the basis of government.

An unsuccessful effort to return to the former constitutional system was early made in the attempt to establish by the co-operation of the "May" councillors, a bicameral legislature.<sup>2</sup>

<sup>1</sup> And, further, Cf. Benj. Akin, Dartmouth, July 29, 1774, to Samuel Adams: "and when ever affairs come to be Settled; it Would be Best for us to form a New Charter for ourselves, that will be most agreeable to us; . . . ." *Revolutionary Corresp.*, III., 277, Bancroft Collection.

<sup>2</sup> On October 27, 1774, a motion to invite Samuel Danforth to attend was defeated. He had been chosen to the council in May, 1774, and had not been negatived by Gov. Gage. Of that council Gage had negatived 13 out of 28. It was now voted to ask the attendance of 12 of those whom he had not negatived.

On the day when the formal invitation was extended to those who, it was thought, might still form an upper chamber, a committee, consisting of Major Hawley, Mr. Cushing, and Mr. Gerry, was appointed to report a resolve "relative to an equal representation of the province in Congress at the next meeting thereof."<sup>1</sup> In the first Provincial Congress, somewhat later, a report was considered from the committee on the state of the province, relative to assuming civil government, but it was ordered to lie on the table.<sup>2</sup> On the same day the Congress was dissolved, an election of a second and similar Provincial Congress was called, and the franchise for that body was granted to "such only as are qualified by law to vote for representatives in the general assembly, . . ."<sup>3</sup> Such opportunity for popular action, even in so troublesome times, was deliberately allowed, since it was known that "many states have been taught by fatal experience, that powers delegated by the people for long periods have been abused to the endangering the public rights and liberties," and since the members of the Congress considered that they had been chosen when the public was "not apprehensive that the business necessary to be done would require their attendance for any long time. . . ."<sup>4</sup> A distinction with reference to

It was also voted on October 27, that John Erving and Jeremiah Powell, both of whom also had escaped the royal negative in May, should be invited to attend, "upon its being evident that they had not accepted, and upon their having given full assurances that they would not accept, of their commissions as mandamus counsellors, . . . ." *Journal of the Provincial Congress*, 36, 37.

On the next day it was voted that fourteen of these "constitutional members of his majesty's council of this colony, by the royal charter chosen to said office last May session, be desired to give their attendance at the next meeting of this Congress upon adjournment, that this body may have the benefit of their advice upon the important matters that may then come under consideration." *Ibid.*, 40. Cf. *Ibid.*, 48-51.

<sup>1</sup> October 28, 1774; *Ibid.*, 40.

<sup>2</sup> December 10, 1774; *Ibid.*, 72.

<sup>3</sup> *Ibid.*, 73.

<sup>4</sup> *Ibid.*, 73.

tenure of mandate appeared in the election of the new Congress for a stated term, and as the 30th May<sup>1</sup> drew near, the danger of a legislative interim increased,<sup>2</sup> and steps were taken on May 5 for the election of a third Congress, to meet May 31, and to be composed of as large delegations as each town and district should determine. They should be chosen, as previously, by those legally qualified to vote for representatives, and should continue in power for six months.<sup>3</sup> On the day after these votes an effort at reorganization was made, by the appointment of a committee of seven to report a resolution "containing a reconsideration of the resolve passed yesterday, respecting the choice of delegates for a new Congress, so far as to determine what towns should send members, and how many members each town and district ought to send."<sup>4</sup> Such a check, however, upon the process of renewal was rejected; the vote was reconsidered as soon as passed; and there followed the less harmful step, unrestricted as to time or effect, of the appointment of a new committee of five with the general duty, "to take into consideration an equal representation of this colony, and report thereon."

Before any such report could be presented more radical action was taken by the Congress relative to the reformation of government.<sup>5</sup> On May 12, 1775, it was moved first that the "sense" of the Congress should be taken on the question: "Whether there is now existing in this colony a neces-

<sup>1</sup> The Congress was elected to serve "until the Tuesday next preceding the last Wednesday of May next, and no longer; . . ." *Journal of the Provincial Congress*, 73.

<sup>2</sup> As to the possibility of the election of a General Court on the basis of writs issued by General Gage and the loss of such possibility see pp. 63-65.

<sup>3</sup> Cf. *Ibid.*, 195, 196.

<sup>4</sup> *Ibid.*, 198.

<sup>5</sup> On May 5, 1775, a resolution of the Committee of Safety was presented, "giving it as their opinion, that government, in full form, ought to be taken up immediately," and the consideration was appointed for May 9. *Ibid.*, 197. Cf. *Ibid.*, 536. On May 8, the consideration was postponed until May 12. *Ibid.*, 207.

sity of taking up, and exercising the powers of civil government, in all its parts."<sup>1</sup> The question was then considered in the committee of the whole house, Joseph Warren acting as chairman. Their report to the Congress was to the effect "that a committee be raised, for the purpose of reporting to the Congress an application to the Continental Congress for obtaining their recommendation for this colony to take up and exercise civil government, as soon as may be, and that the committee be directed to ground the application on the necessity of the case;"<sup>2</sup> the report was promptly accepted by a large majority, and the preparation of the application was entrusted to a committee of seven, Messrs Joseph Warren,<sup>2</sup> Church, Gerry, James Warren, Sullivan, Danielson, and Lincoln.<sup>3</sup> By this act a distinctly new course was taken by the Congress; its adoption and its development were equally significant. On May 16 the special committee made its report, which was carefully considered and accepted. This involved the immediate despatch to the Continental Congress of a memorial which should state the circumstances of Massachusetts with reference to governmental and military affairs and should allude to the increasing probability that by the sword alone could a decision of the question at issue between themselves and the motherland be reached. And inasmuch as this question, they continued, "equally affected our sister colonies

<sup>1</sup> *Journal of the Provincial Congress*, 219.

<sup>2</sup> On May 14, 1775, Joseph Warren wrote to Samuel Adams: "We are here waiting for advice from the Continental Congress respecting our taking up government. We cannot think, after what we have suffered for a number of years, that you will advise us to take up that form established by the last charter, as it contains in it the seeds of despotism, and would, in a few years, bring us again into the same unhappy situation in which we now are." Frothingham, *Life of Warren*, 483. On May 16, Warren wrote to Arthur Lee, then in London: "I suppose, before I hear from you again, a new form of government will be established in this colony. Great Britain must now make the best she can of America." *Ibid.*, 488. This is printed in 4 *American Archives*, II, 619, 620.

<sup>3</sup> *Journal of the Provincial Congress*, 219, 220.

and us, we have declined, though urged thereto by the most pressing necessity, to assume the reins of civil government,"<sup>1</sup> without the advice and consent of the Continental Congress. The raising of an army more clearly revealed the need of the situation, for in the current political philosophy "the sword should, in all states, be subservient to the civil powers," and the Massachusetts men confessed a tremor "at having an army, although consisting of our own countrymen, established here, without a civil power to provide for and control it." Thus appealing to and recognizing "the representative body of the continent," they asked its most explicit advice, with reference to the assumption and exercise of powers of civil government, which they thought "absolutely necessary for the salvation of our country;" and pledged their prompt submission to such general plans as might be adopted by the Continental Congress.<sup>2</sup> A long step had been taken not only toward the nationalization of the new general government, but also toward the local reorganization in Massachusetts.

The matter thus formulated was presented to the Continental Congress on June 2, 1775, when the letter of the Massachusetts Congress was read and ordered to lie over for further consideration.<sup>3</sup> On the same day Dr. Church, by vote of the Congress, appeared before that body, and further communications from Massachusetts were laid before the Congress by its president.<sup>4</sup> On the next day the Massachusetts letter of May 16 was again read and referred, for

<sup>1</sup> *Journal of the Provincial Congress*, 230. The letter is printed in 4 *American Archives*, II., 1842.

<sup>2</sup> On the same day, May 16, it was determined by ballot that Dr. Benj. Church should present the request. *Journal of the Provincial Congress*, 232. On July 9, 1775, the receiver general was directed to pay Dr. Church, £34: 5 sh.: 2 d., "in full discharge of his account of expenses of himself and servant, on a journey to Philadelphia, in May last." *Ibid.*, 479.

<sup>3</sup> *Journal of the Continental Congress*, I., 112.

<sup>4</sup> *Ibid.*, I., 113.

report, to a committee, chosen by ballot, consisting of John Rutledge, Johnson, Jay, Wilson, and Lee.<sup>1</sup> To allow time for committee work, no further session of the Congress was held until June 7, when the special committee made its report. This was read, ordered to lie over for further consideration,<sup>2</sup> and was again considered two days later, when the Congress finally resolved upon the nature of its advice to the Massachusetts Congress.<sup>3</sup>

This reply of the Continental Congress, embodied in its resolution of June 9, 1775, was significant and important. The actual situation in Massachusetts was fully recognized and endorsed. It was declared that no obedience was "due to the act of parliament for altering the charter of the colony of Massachusetts Bay, nor to a governor and lieutenant governor, who" would "not observe the directions of, but endeavor to subvert that charter";<sup>4</sup> and the radical conclusion was drawn that the governor and lieutenant governor were to be considered as absent and their offices vacant. They re-

<sup>1</sup> *Journals of the Continental Congress*, I, 113.

<sup>2</sup> *Ibid.*, I, 114.

<sup>3</sup> *Ibid.*, I, 115.

<sup>4</sup> *Ibid.*, I, 115. The resolution is printed in *Journal of the Provincial Congress*, 359. It is also printed in *4 American Archives*, II., 1845.

On June 10, 1775, Thomas Cushing, at Philadelphia, wrote to Joseph Hawley: "Inclosed you have a Vote of the Congress relative to our Peoples taking up Government, which I apprehend will Correspond with y<sup>r</sup> Sentiments. A motion was made in Congress that advice should be given to y<sup>e</sup> *present provincial Congress* to chuse Councillors, but there being many objections to it, it was withdrawn. The Person that made y<sup>e</sup> motion observ'd that y<sup>e</sup> choice of Representatives would occasion great Delay—& that there could not at present be an Equal Representation as *Boston* would not be permitted by the General to chuse Representatives upon this Occasion—he was answered that the Delay would not be great, that it was best to adhere as near to y<sup>e</sup> Charter as possible & not to vary from it but in case of absolute necessity—that as to the Town of Boston either the present Provincial Congress or the New Assembly could easily make some provision for their being Represented either by directing the late Inhabitants to meet at Cambridge or some other Town & chuse their Representatives or by divising some new mode of Collecting the Voice of the People upon this Occasion." *Hawley Papers*, II., Bancroft Collection.

cognized that there was no council and that the executive was directing hostilities against those whom he was commissioned to protect. In such a situation an approximate conformity to the spirit and substance of the provincial charter was suggested. To effect this they concluded with the recommendation to the Provincial Congress to write to the several places which were "entitled to representation in assembly, requesting them to choose such representatives; and that the assembly, when chosen, should elect counsellors; which assembly and council should exercise the powers of government, until a governor of his majesty's appointment" should "consent to govern the colony according to its charter." It was on the afternoon of the memorable 17th June, 1775, that a letter of President John Hancock was received, enclosing the resolution in question.<sup>1</sup> On the next day, Sunday, a messenger was sent to Dr. Church for the letters he was said to have brought from Philadelphia.<sup>2</sup> Immediately a committee of seven,<sup>2</sup> including Major Hawley, Col. Warren, Dr. Church, and Col. Otis, was appointed to take into consideration, among other things, the letter of Hancock and the resolution of the Continental Congress as to government. The committee reported on Monday, the day on which James Warren was chosen president of the Congress, "in the room of the Hon. Joseph Warren, Esq., supposed to be killed in the late battle of Bunker Hill."<sup>3</sup> Their report was read and debated, but its further consideration

<sup>1</sup> *Journal of the Provincial Congress*, 352.

<sup>2</sup> Cf. Frothingham, *Rise of the Republic*, 441, speaks of the advice as "a disappointment to the patriots, who desired to form a government worthy of free-men, . . . ."

On July 9, 1775, James Warren, then at Watertown, wrote to Samuel Adams: "When are we to see all the Govts, & our own with them reformed & set upon a Good Bottom. We look for such an Event." *Adams Papers*, Bancroft Collection.

<sup>2</sup> *Ibid.*, 353.

<sup>3</sup> *Ibid.*, 356.

postponed "until Doct. Church, who was at Philadelphia at the time said resolve of the Continental Congress passed, shall be present."<sup>1</sup> Such seems to have been the case on the succeeding day, when he was placed on a committee of five to consider some method by which it would be possible for the late inhabitants of Boston and Charlestown to vote for representatives, and to arrange for the printing and distribution both of the resolve of June 9, and of the letter to the several towns of Massachusetts adopted by the Congress on the report of the committee of June 18. The contents of the Philadelphia resolution have been stated; the letter now accompanying that was sent out to the boards of selectmen in the several towns. These were requested to appoint an election of deputies, in which the suffrage should be exercised by all freeholders in each town and by all other inhabitants therein who might possess, "within this province or territory," a freehold estate valued at 40 shillings *per annum* or other estate valued at £40. Each town, according to the last provincial act on representation, was to elect one or more freeholders, resident in such town; each election was to be by the "major part" of the electors present in each town meeting; and, finally, the term of this new body was to extend from July 19, 1775, "until the end of the day next preceding the last Wednesday of May next, if necessary, and no longer, . . ."<sup>2</sup> The meeting-house in Watertown was indicated as the place of assembling, and provision was made that each person duly elected should be formally notified of his duties by one or more constables of his town. A form of "return" was also adopted at this time, in which should be reported, over the signatures of the selectmen, the result of the election under their charge, and to which should be appended the statement of the constable that the person named in the "return" as elected had by him been duly notified and

<sup>1</sup> *Journal of the Provincial Congress*, 357.

<sup>2</sup> *Ibid.*, 359.

summoned. On the same day, June 20, recognition was accorded in a letter to the Continental Congress, to the "compassion, seasonable exertion, and abundant wisdom," of that body, and the assurance was given by the Massachusetts men that they would apply themselves "with all diligence, to fulfil your benevolent intentions, and establish the form of government recommended by your honors; that so, order and government may be restored to this disturbed community."<sup>1</sup>

The elections thus called were held, and the representatives then elected met at Watertown on the appointed day.<sup>2</sup> The Provincial Congress meanwhile remained in session, sitting even on the morning of July 19. At that time a matter of finance was referred to three members who were significantly "directed, in case they cannot report to this Congress, to make report to the next House of Representatives."<sup>3</sup> The use of terms was suggestive; the evolution was rapid, and in form as well as in theory it was practically an unbroken development. The Provincial Congress, after the action indicated, voted its own dissolution; and on the same day began the session of the newly elected and newly founded General Court.

<sup>1</sup> *Journal of the Provincial Congress*, 365.

<sup>2</sup> In the meantime, on the basis of a report by Messrs. Hawley, Gerry, and Fuller, appointed June 21, it was, on July 5, 1775, resolved that, as unforeseen events might render the holding of a General Court at Watertown on July 19, unsafe and "very improper," a committee of five should have power, in case they, or three of them, "judge it improper or unsafe, that such general assembly should be convened at the said Watertown, at the time aforesaid, to agree upon, and determine, at what other place in this colony, the said general assembly should be convened; . . ." *Ibid.*, 369, 454.

<sup>3</sup> *Ibid.*, 501.

## CHAPTER VI

### THE CHARTER RESUMED

#### § I. *Provincial Forms in the Commonwealth*

THE "resumption" of the charter of 1691 gave to the people of Massachusetts, who still retained their former local government,<sup>1</sup> a provincial government with accustomed forms. It gave them what in the ten months preceding had been lacking, a government of which the powers, functions, and duties, were to an extent defined, and in which, as well, the more important processes of the governing bodies were stated. This, as has been said, was an advance toward constitutionalism, although in form it was a retrogression; for the government now adopted by the representatives of the people, with the sanction of the Continental Congress, was a charter framed for a royal province and not for a democratic commonwealth. This anomaly was not such in theory alone; more tangible facts and even ordinary routine made it plain that the instrument could not long serve such new purposes. This was unavoidable in a document based, for instance, on an assumption of relations with an external and superior power having an immediate and vital share in the internal government of the province. Massachusetts had had, to be

<sup>1</sup> An exception, in detail, arose from the presence of the royal forces. Thus, the General Court, February 8, 1776, (Acts of 1775-'76, ch. 12), moved the courts of Suffolk county from Boston to Dedham and Braintree, and further enacted: "That Dedham shall be the shire town of the county of Suffolk, for the future." *Acts and Resolves of the Province of Mass.*, V., 455, 456. This act was repealed on November 12, 1776, (Acts of 1776-'77, ch. 19), when Boston was re-established as the seat of the Suffolk courts. *Ibid.*, V., 593, 594.

sure, a large share of administrative independence, and almost all the functions of its charter government were such as could be exercised by the independent action of the local population. An important exception, in which the influence of an outside power was apparent, was the provision for the appointment of the executive by the crown. In this official was vested an important share in the appointment of many officers, both judicial and executive, while he also possessed essential powers of legislation, as well as powers of a judicial and executive nature. Strict adherence to the charter was then impossible under the altered circumstances, and it was necessary that some change should be made. The form which it took, was, that, when the charter was resumed, upon the council of twenty-eight, which formerly had shared with the governor certain of his executive and judicial functions, all the duties pertaining to the executive office were conferred.<sup>1</sup> By means of this modification in the provincial charter Massachusetts secured once more a definitely organized form of government, and so continued through the next five years, a period stamped, equally with the preceding, as one of transition. Such character was plainly given to it by the peculiarities of the modified form of government. These modifications, from both a theoretical and a practical point of view, made the period of its use one of slight, even if uncertain, length.<sup>2</sup>

Under the new arrangements the twenty-eight members of the council, by a majority vote, exercised powers of a legis-

<sup>1</sup> A list of the members of the house and of the council of 1775-'76, was printed in the *Boston Gazette*, no. 1052, July 24, 1775. Lists of civil officers appointed by the majority of the council were printed in *Ibid.*, no. 1062, October 2, 1775, and no. 1063, October 9, 1775. Cf. *Journal of House of Representatives*.

<sup>2</sup> The town of Stoughton, October 2, 1776, in a vote relative to a new constitution, referred to the state as "at present Destitute of a fixed and Established form Government." *Mass. Archives*, 125: 156.

lative, an executive and a judicial nature.<sup>1</sup> This fact, although directly contrary to theories soon to be strongly advanced, was not in itself a bar to the use of the charter. The governor and council ordinarily exercised powers thus varied and intermingled. But while many such had been exercised by them jointly, others had been exercised by each independently. This was especially applicable to the legislative process in which the members of the council, acting as an "upper house," would pass a bill in their legislative capacity, which would then come before the governor for his action. It was possible, and it had actually occurred in practice, that the council, as a branch of the legislature, might pass a bill, and that a part of the body, acting as the advisory councillors of the governor, might recommend its rejection. The circumstance was abnormal; it was even more so when the same body of men were in a position both to act upon a bill in a legislative capacity and immediately to act upon it as an executive.<sup>2</sup> Practically, there existed a bicameral legislature, of which the upper house was chosen by the lower house, and by this annual choice directly controlled by the representatives of the people; so that well might Samuel Adams speak of the government of Massachusetts as being "now more popular than it has been for many years past."<sup>3</sup>

<sup>1</sup> It is significant that at the opening of each session of the General Court the council, as executive, adhered to custom and sent an address to the house. One further exercise of special executive powers is seen in the calling of the special session of August 5, 1777, by proclamation of the council, the General Court having, on July 8, 1777, adjourned to meet on the first Wednesday in September. *Journal of the House of Representatives*.

<sup>2</sup> July 29, 1775, the House in a vote referred to the "Council, in capacity of Governor . . . ." 4 *American Archives*, III., 291.

<sup>3</sup> Samuel Adams, Philadelphia, to James Warren, November 5, 1775. *Adams Papers*, Bancroft Collection. Cf. Proclamation of General Court of January 19-23, 1776: "The present generation, therefore, may be congratulated on the acquisition of a form of Government more immediately, in all its branches, under

It was unavoidable that, from a theoretical point of view, there should be found inconsistencies and anomalies in the use of such a charter. The assumption of such forms was what seemed the wisest move at a time when acts were largely dependent upon expediency. The justification of the action was afforded in the subsequent maintenance of peaceable and legal procedure during the years when efforts for a reorganization of government were being vigorously promoted and warmly opposed, and when these efforts attained final success in the relinquishment of the charter under which and against which they had been made. That such would be the result was tolerably clear even from the beginning. To be sure, Adams, in the letter just quoted, had written with safe qualification: "Perhaps the Form of Government now adopted and set up in the Colony may be permanent."<sup>1</sup> At the beginning, doubtless, no difficulty would be experienced, and such views might readily prevail. Yet in the routine of legislative work it was not long before the disadvantages arising from substituting an executive body of twenty-eight for a single executive became apparent.<sup>2</sup> Thus, even from considerations of convenience, the new arrangements were early condemned. To obtain the signatures of a majority of the new executive body for all public

the influence and control of the people, and, therefore, more free and happy than was enjoyed by their ancestors." 4 *American Archives*, IV., 834. Cf. *Ibid.*, IV., 1268-1270. Cf. John Adams, July 10, 1776, to Abigail Adams. *Familiar Letters of John Adams*, 198.

<sup>1</sup> Cf. John Adams, Philadelphia, May 27, 1776, to Abigail Adams. *Ibid.*, 177.

<sup>2</sup> Cf. Thomas Hutchinson, Boston, February 23, 1774, to Israel Williams, upon his trip to England being delayed by the illness of the lieutenant governor; for he would be "charged with indiscretion in leaving the Govt in the hands of the Council though they should be allowed to be the best men we have: the form of Govt which has a head consisting of 28 parts being very unfit for such times as these." *Letters of T. Hutchinson to Israel Williams*, 79-81, Bancroft Collection.

documents was in itself a task of no small annoyance.<sup>1</sup> The insistence upon such procedure would only emphasize its unnaturalness; its illogical character was illustrated in 1778, when, owing to the prevalence of small-pox in Boston, and to the difficulty of collecting a majority of the council, the General Court resolved that for some five weeks "any Seven of the Council be, and hereby are Impowered to issue & Sign warrants on the publick Treasury, and allso all Acts Resolves & orders, Passed by the Two Houses, and all Such warrants on the Treasury and any other thing, Transacted, by Seven of Said Councill be & hereby is declared to all Intents & Purposes, as Valid as if the Same had bin Signd by Fifteen of the Councill, until the Twentyeighth of May aforesd."<sup>2</sup> Such arrangements served no good purpose, but were rather a hindrance to good administration, and furnished in themselves the occasion for their own disappearance.

Although unsuited to the situation in the various ways of which examples have been suggested, the new frame of government marked an advance over uncontrolled rule by Congress and introduced forms already familiar to the colonists. With the important modification indicated the forms of government of Massachusetts for this short period were identical with those of the earlier provincial period;<sup>3</sup> such statement

<sup>1</sup> Thus of the Acts of 1777-1778 one is signed by 17, one by 16, and all but 6 of the others by 15 of the council. *Acts and Resolves of the Province of Mass.*, V.

<sup>2</sup> *Acts and Resolves of the Province of Mass.*, V., 808—reprinted from *Mass. Archives*, 205: 218.

<sup>3</sup> Attention, however, should be called to the procedure in connection with the organization of the new house for the first time. The speaker of the house was subject to the approval of the governor; and legally a house without a speaker could not elect a council. Cf. James Savage, *Constitution of Massachusetts*, Boston, 1832, P. 4. Cf. *Ibid.*, 3.

On a further point a temporary alteration of procedure was allowed. The voters of Boston were allowed to vote elsewhere during the occupation of city by the enemy. Thus, on November 21, 1775, William Cooper, town clerk of Bos-

suffices to characterize these years and to explain their place in the transitional period. It was during them that preparation was being made for the next important step, and aside from what was done in that direction, little of the legislative activity of the time need be considered. That little, however, was important. The first act<sup>2</sup> passed by the reestablished General Court confirmed all the resolutions and transactions of the Provincial Congresses from October 4, 1774 to July 20, 1775, as lawful and of as much force as if they had been passed or sanctioned by any assembly or General Court. The journals of the Congress might be used under the general issue to free one from guilt or responsibility, and were to become matters of public record.

It was even earlier in its first session that this new house formally adopted the plan already sanctioned by the Provincial Congress for the exercise of executive powers. By the provisions of the charter, whenever the governor and lieutenant, issued at Watertown a notice to the voters of Boston to meet November 28, at the Watertown Meeting-House, according to the vote of the house of representatives of November 6, and to choose a representative to sit in place of Benjamin Church, who had been expelled from the house. *4 American Archives*, III., 1629, 1630.

As to the location of the General Court during this period, it may here be indicated that on November 9, 1776, an adjournment was taken at Watertown, to meet, November 12, in the State House at Boston. *Boston Gazette*, no. 1121, November 11, 1776.

A further instance of irregular procedure appears in connection with the collection of the tax of £46,000 levied by Acts of 1775-'76, ch. 6. By this act it was provided that all inhabitants of any coast town except Boston and Charlestown, who had removed to other towns in Massachusetts since December 1, 1774, should be assessed by the assessors of the towns whence removed. It was further provided that the fugitive inhabitants of Boston and Charlestown should be rated in each town in a separate list, on polls, personal estate, and business, "according as such assessors shall judge just and reasonable; . . . ." *Acts and Resolves of the Province of Mass.*, V., 435.

<sup>1</sup> The preamble well illustrates the preceding period; see *Acts and Resolves of the Province of Mass.*, V., 415. *Charters and General Laws of Mass.*, Boston, 1814, 687, 688.

ant-governor were absent from the province the duties of the chief executive devolved upon the majority of the council. In the view of the house not only had both the governor and lieutenant-governor absented themselves from their official posts, but they had definitely refused to govern the province in accordance with the royal charter. The representatives accordingly resolved that, until one of those royal officers shall return to his duty, or until "some Governour shall be appointed to govern the Province according to the Charter aforesaid," they will consider the majority of the "Constitutional Council" as the "Governour of this Province, and will acquiesce in whatever said Council, . . . shall constitutionally do in such capacity."<sup>1</sup>

While thus offering presumably an opportunity for reconciliation and for a complete resumption of earlier forms and relations, the house showed its position more clearly by the prompt passage of a bill providing that all those officers, both civil and military, who held office by virtue of a commission granted by the provincial executive power "before the present meeting of this general court," should cease action upon such authority on the approaching September 19.<sup>2</sup> New commissions and new forms of oaths made it plain that, after July 19, 1775, a new authority existed in Massachusetts. The change was shown to be a radical one by the subsequent and more important act of May 1, 1776,<sup>3</sup> when provision was made for the termination of the force of all commissions in the forms then current, for the disuse of the regnal calendar and phraseology, and for the establishment

<sup>1</sup> *American Archives*, III., 289. This was passed July 28, 1775. *Journal of House of Representatives*; where no page citation is made the reference is to the proceedings on the date in question, as given in the records printed at the time for the General Court.

<sup>2</sup> *Acts and Resolves of the Province of Mass.*, V., 420, 421.

<sup>3</sup> *Journal of the House of Representatives*.

of the "Government and People of the Massachusetts-Bay, in New England," as the source of the authority by which writs, precepts, and commissions thereafter were to be issued.<sup>1</sup> Thus, "We are daily altering our old, unmeaning form of government, as you may learn by the Style Bill," wrote James Sullivan, the author of the bill, to John Adams.<sup>2</sup>

To insure the success of this alteration of government, they entrusted the council with the authority to assemble the population for the defense of the province, and they passed, with reference to military affairs, further legislation directed to the attainment and maintenance of independence.<sup>3</sup> The plain assumption was that the end was to be success, and that a new state was to appear. The tacit assertion of this ap-

<sup>1</sup> June 1, 1776, was fixed as the time after which the new forms were to be used in the courts, and the regnal dating and king's authority to be suppressed in such proceedings, and in writs, commissions, etc. All commissions, regardless of form, made by the majority of the council since September 19, 1775, were to be in force until September 19, 1776; but the council were empowered to alter the form of such commissions. *Acts and Resolves of the Province of Mass.*, V., 484, 485; *Charters and General Laws of Mass.*, 798-800. By an act of June 29, 1776, the council was empowered to alter also those commissions issued between August 1 and September 19, 1775; and all commissions, civil or military, issued between those dates by a majority of the council were to be void unless changed by September 19, 1776. *Ibid.*, V., 549, 550. In the Library of Harvard College is one of these commissions, with the required alterations. Cf. H. B. Dawson, *Declaration of Independence by Massachusetts*, 1862.

<sup>2</sup> *New England Historic Genealogical Society, Proceedings Commemorative of the organization of government in 1780*, Boston, 1880, p. 21.

<sup>3</sup> Cf. *Acts of 1775-'76*, ch. 1; ch. 10; ch. 15; ch. 17; ch. 19; ch. 27; *Acts of 1777-'78*, ch. 24. By an Act of January 22, 1776, *Acts of 1775-'76*, ch. 10, a train-band was formed of all between 16 and 50 years of age, with several exemptions, including "officers and students of Harvard College, . . . churchwardens, grammar-school masters, masters of arts, the denomination of Christians called Quakers, selectmen, for the time being, . . . ." *Acts and Resolves of the Province of Mass.*, V., 445. Legislation was directed to the enforcement of the resolution of Continental Congress, March 14, 1776, as to disarming the disaffected and those who refused to "associate." *Ibid.*, V., 479-484. Acts were also passed to prevent the return of specified persons who had gone over to the enemy. Cf. *Ibid.*, V., 912-918.

peared in the legislation of the General Court of February, 1777, when the existence of a new sovereign was presumed in a statute concerning treason. A condition was there outlined which involved allegiance to the power represented by the General Court. Treason against such power was defined and the penalties therefor were established.<sup>1</sup> On a similar basis new oaths of allegiance were prescribed.<sup>2</sup> Along one very important line of action, thus, the General Court gave endorsement and effect to the work of the Provincial Congress by impressing upon each member of the commonwealth the truth of the new theory of relations. The possibility and the propriety of such action by the General Court must have been evident, for the towns, with practical uniformity, had already by formal votes renounced their allegiance to the English king. The representatives had, on May 10, 1776, passed a resolve for obtaining from each town authoritative statement of the prevalent views as to the attitude proper to be assumed in case the Continental Congress should declare independence. The response was such as to give assurance that Massachusetts was a unit with respect to the principal points of policy; and it was such, further, as to justify the representatives in the position assumed and the course followed.<sup>3</sup>

While the short period in question was wholly a transitional one, the government of the province was on a basis which, with the important limitations indicated, was one of

<sup>1</sup> Acts of 1776-'77, ch. 32; *Acts and Resolves of the Province of Mass.*, V., 615. Cf. 1 Mass. Reports, 360.

<sup>2</sup> Acts of 1777-'78, ch. 18; Cf. Acts of 1777-'78, ch. 25, which latter act elaborated and explained the former, and provided that, if any one declined to take the oath, proceedings should be begun against such person within two hours.

<sup>3</sup> More detailed statement would, however, show that in securing local expression on the subject of independence, the house failed to obtain the concurrence of the council and finally acted independently thereof.

permanence. As such a government, to all appearances, the General Court proceeded in the regular exercise of the functions of the provincial legislature.<sup>1</sup> In form, regularity again prevailed, and in the attainment of that was the success of the change. Revolutionary procedure was made impossible; but to the people revolutionary acts had given more power than had ever before been effectively exercised by them. The governing and the governed were at last identical,<sup>2</sup> and the opportunity was seized to make the assurance of that identity permanent. When the guarantee of such permanence was introduced into the organic law of the land, the transition may be considered complete. The efforts to effect such introduction cover the greater part of this half decade, and are made amid prolonged contests in the press, innumerable instances of varied local action, and a marked activity in the practical political life of the people.<sup>3</sup> It was unavoid-

<sup>1</sup> Detailed enumeration of those powers as specifically exercised is not essential. Mention, however, may be made of such acts as that of February 9, 1776, *Acts of 1775-'76*, ch. 14, continuing or reviving 107 acts passed between 1737 and 1773. *Acts and Resolves of the Province of Mass.*, V., 457-462. Cf. *Ibid.*, V., 903-905, 1120-1125. The General Court, before it had served six months, assessed a tax of £46,000, and ordered an issue of £75,000 bills of credit. *Ibid.*, V., 423, 442. In view of the doubt of collectors as to their authority to collect taxes levied before July 4, 1776, on October 17, 1777, the house resolved, the council concurring October 18, "That all such delinquent Constables and Collectors of Town County and Parish Taxes be and they hereby are directed to perfect their Collections on such Warrants respectively, and that said Warrants are and ought to be considered in full Force the Declaration of Independence notwithstanding," *Mass. Archives*, 145: 215.

<sup>2</sup> Strictly, of course, an exception should be made of those who by the slight property qualification were denied the right of suffrage, and a further exception, according to the views of some, should be made of those who by age or sex were also excluded from a share in the political activities.

<sup>3</sup> This last statement is emphasized by the large proportion of new members in each house of representatives. Thus in the house elected in May, 1776, out of a list of 266 members, 161 were not in the preceding house. *Boston Gazette*, no. 1098, June 3, 1776. In an incomplete list of the house of May, 1777, are 124 new members. *Ibid.*, no. 1150, June 2, 1777.

In an incomplete list of the house of May, 1778, are 95 newmembers. *Ibid.*,

able that under such conditions many problems of theory and many questions of expediency of action should arise; and it was in the solution of such that the transitional development in Massachusetts made definite addition to the permanent results of the Revolution.

### § 2. *The Issues of the Period*

In the five years during which the restored province charter was in force, the steady trend was toward a re-organization of government on a basis that would prove to be of some permanence. In the course of this development many questions, both trivial and important, demanded attention; and it was the action thereupon that made a significant addition to the constructive work of the period. When the first constitution proposed for Massachusetts was completed, in the year 1778, every colony had adopted a new form of government or had taken as such its earlier charter; one colony had adopted its second constitution; and the people of the region called Vermont had declared their independence and likewise formed a constitution. In no instance had there been a substantial recognition of the possession by the people of any constituent power, of any power to authorize the institution of such forms of government as were about to be imposed upon them. In some cases, to be sure, the members of the body which formed the constitution had been especially instructed by their constituents to exercise such

no. 1240, June 1, 1778. In the house of May, 1779, were at least 85 new members. *Ibid.*, no. 1292, May 31, 1779. In the house of May, 1780, were at least 94 new members. *Ibid.*, no. 1345, June 5, 1780. In Connecticut, the house elected in May, 1779, had 101 members, out of a total of 146, who were not in the house elected in October, 1778. *Connecticut Gazette*, no. 810, May 20, 1779. In this house 36 towns had wholly new representation, and from only 9 towns were the same two members returned. *Connecticut Journal*, no. 606, May 26, 1779.

powers; or the convention had been given a claim to constituent power by the intermediate action of the people; and yet other conventions or congresses had assumed the right to form a constitution, had done so, and had imposed their work upon their constituents, and enforced obedience to it as fully as their resources allowed. Regardless, however, of the preliminary authorization, or the lack of authorization, of these bodies to form a constitution, it is an essential fact that in none of the fifteen instances indicated was the body which exercised such powers a body formed for such specific exercise and for such alone; it was, on the contrary, a body oftentimes in its origin revolutionary, and in its activity showing elements of a supreme judicial control, of a direction of executive affairs, and of practically continuous committee work and resulting legislation, as well as such activity as is commonly considered that of a constituent body.

The earlier instances of the exercise of constituent power, whether proper or not, are characterized by a further distinction applicable to all, and far more important both in its practical bearings and in its theoretical significance. In no case was the work of the so-called constituent body submitted, for acceptance or rejection, to those in whose behalf the body was supposed to be acting. The possession by their constituents of any power of sanction was disregarded or denied; the new constitutions were actually imposed upon the people, whether accepted or not, and no voice in the matter was allowed to those who presumably might rightfully have such. Such arbitrary action was, to be sure, in many cases thoroughly expedient; but such justification in no way mitigates the evil of such a course when judged by the standards of political procedure soon thereafter prevalent. In the political conditions then existing, with the enemy's forces near at hand or approaching, with many unknown enemies forming an indeterminate minority and a possible majority of the

colonial population, with royal government already destroyed or rapidly falling to pieces, with local government maintained, if at all, only by public sentiment, it was imperative that there should be prompt and decisive action. The critical situation demanded, if disorganization and possible anarchy were to be avoided, the establishment of some organization to take the place of that already overthrown. Government, at least provincial government, must be established, and in supplying plans for such the various congresses acted upon a candid interpretation of their duty to their constituents. Consciousness of such duty prompted, as well, the further action of the peculiar type indicated. No risk should be taken in promoting the new establishments, for a failure in the first step might readily entail consequences not to be foreseen. The possibility of such failure was due in large measure to the character of the population, and to the rapid development of political conceptions and the resulting changes of political allegiance. The presence of sympathizers with the king and the existence of an unknown number of promoters of such sympathy made an appeal to the suffrages of the people upon any important question extremely hazardous and its result wholly uncertain. To refer a question of such vital importance to the whole population was by the leaders deemed unwise, and was thus impossible. Each Congress accordingly took the successive steps independently of the mass of the population, with the co-operation in each case of a small number of true leaders, with the implied recognition and approval of the electors of the Congress, and with the acquiescence, granted for expediency or secured through compulsion, of the remainder of the population.

The uniform application of such a description to all instances of the seizure of provincial governments before 1778 makes clear the necessities of the time and the summary manner in which those necessities were met, and for that

very reason distinguishes as especially striking the course of action followed in Massachusetts. In that commonwealth was put forth strongly the claim that in the people themselves rested the supreme power, and there the composition of the constituent power was clearly defined. In that commonwealth, as well, appeared in practice for the first time the proposition that the exercise of constituent power should be entrusted by the people to a body which should possess such power and such alone.

The successful application of the former proposition was in a large degree impossible in the year of the greatest constituent activity<sup>1</sup> throughout the colonies. Even Massachusetts, in 1775, did not submit the question of the resumption of the province charter to a popular vote. By 1778, however, and even earlier, the situation had radically changed. Then the northern province was, from a military point of view, practically secure. Internally parties had long been defined, and proscription had made the province essentially a political unit upon all questions of real importance. It had thus become possible to make a direct appeal to the people without fear of the result. The security of such a step was increased by nothing more tangibly than by the manner in which town governments had been regularly maintained and had, with a very few exceptions in the early months, been controlled by the patriot party. Political activity had been kept at its height in the town organizations, and the political consciousness of each individual had been visibly stimulated by the current of action and by the prevailing political philosophy. Preparation for further advance in the political development was ample and obvious; and it

<sup>1</sup> Cf. Wm. Whipple, Philadelphia, July 16, 1776, to John Langdon; as to the Declaration of Independence: "This Declaration has had a glorious effect—has made these Colonies all alive: all the Colonies forming Governments, as you will see by the papers." 5 *American Archives*, I., 368.

was equally evident that even the first change could not be effected without the immediate participation therein of each person in the political society. The extreme assertion of the privileges of the individual and of his right to share in the political activity of the commonwealth resulted naturally from adherence to an individualistic philosophy and from an exaggerated and perverted regard for the "state of nature."

The first important fact established in these few years by the men of Massachusetts was the superiority of the political population to forms of government. It was asserted, and the assertion was maintained, that the object of government was the good of the governed,<sup>1</sup> that government was to be administered only on the basis of definite stipulations and forms, and that the alteration of those rested solely with the governed acting under self-imposed conditions.<sup>2</sup>

The assertion was made, and maintained, that the power to confer authority to form a constitutional government, to sanction and to put it into operation, to alter or revoke it,

<sup>1</sup> Cf. "The Interest of America:" "We should always keep in mind that great truth, viz: that the good of the people is the ultimate end of civil Government." <sup>4</sup> *American Archives*, VI., 840, 841. Cf. "Where there are no people, there can be no government; it is the people that constitute the government; and to give away a government is giving away the people, in the same manner that giving the proprietaryship was giving the soil." *Four Letters on Interesting Subjects*, Philadelphia, 1776, 12.

<sup>2</sup> Not even a special convention can establish a constitution that cannot be altered by the people. Furthermore: "Constitutions of Civil Government, like other things, grow better from time to time, until they arrive at the highest perfection that their nature is capable of, and then they go to decay—." "Speculator," in *Boston Gazette*, no. 1134, February 10, 1777.

The House of Representatives in a message to the Council, April 21, 1777, speak of the "People, who have at all Times a Right to form or alter a Constitution, . . ." *Mass. Archives*, 158: 81-83.

Cf. "The Interest of America:" "As the Government is for the people, the people, when properly represented, have a right to alter it for their advantage." <sup>4</sup> *American Archives*, VI., 841.

Cf. Elliot, *Debates*, Philadelphia, 1888, II., 432.

rested wholly with the people.<sup>1</sup> It was this recognition of the people as the possessors of the highest power in the commonwealth, and as the source of all authority, that distinguished radically the development in Massachusetts. It was the maintenance of this view that marked the procedure there as a significant advance in the development of the American commonwealth.

As soon as the people were given an opportunity, by the resolve of the General Court of September 17, 1776, to act with reference to the exercise of constituent powers, we find a prompt assertion of the popular idea of the nature of the action proposed. Many towns granted to the General Court its request for the authorization to exercise constituent powers; but to such action was repeatedly joined the provision that the constitution so framed should be submitted to the various towns for approval or rejection, or, as Ipswich voted, for "their inspection and advisement."<sup>2</sup> The opposition of Worcester and Boston prevented the action in which, on the condition indicated, a sufficiently large number of the towns would have acquiesced. The refusal of Boston so to empower its representatives was a more emphatic assertion of local and personal rights; in the view of the town the forming of a constitution and government "extends as much to our *Religious as Civil Liberties*, and includes our *all*—It effects every individual; every individual therefore ought to be consulting, acting and assisting."<sup>3</sup>

<sup>1</sup> Cf. J. Adams to Jas. Sullivan, May 26, 1776. *Works of John Adams*, IX., 375.

<sup>2</sup> October 7, 1776; *Lincoln Papers*. Cf. Vote of Rowley, October 21, 1776, that the Constitution should be published for "perusal." *Ibid.* Cf. Vote of Salem, October 8, 1776, that the constitution should be ratified by the towns. *Ibid.* The vote of Norton asserted that as the end of the government is the good of the people, and that the power to form and establish a Constitution is "essentially in them." *Mass. Archives*, 156: 125. Cf. Vote of West Springfield, October 3, 1776; *Lincoln Papers*.

<sup>3</sup> *Report of the Record Commissioners of Boston, Town Records, 1770-1777*, 248.

Although it was not deemed expedient to act upon such authorization as was at that time granted to the legislators, the occasion served to give recognition and public sanction to the theory asserted, that no form of government should be established until it had been submitted to the people in their town-meetings. Such a proposal was thereafter repeated, and the procedure thus suggested finally established. A second reference of the question to the towns by the General Court in May, 1777, was followed by affirmative action on the part of a sufficient number of towns, but such action was uniformly accompanied by the instruction to the representatives that the form of government, then to be devised by the members of the General Court, should be referred to the people acting in town-meetings, who should be recognized as possessing a final power to reject or establish. The instructions were observed, the reference was made, and the subsequent action of the towns was accorded full weight, both by the General Court and by the people. An entirely new practice, hitherto not countenanced in this constructive period, was thus introduced and its permanence assured. The attempt at a constitution in 1778, and its rejection in the following year, were instructive to the population and beneficial to the commonwealth; they offered, as well, the opportunity for definite advances in constitutional development, of which none is more fundamental than that indicated. The theory and the practice then adopted were followed without a question or limitation in the proceedings of 1779 and 1780, and their incorporation into the authorized theory of the state assured.

Among the reasons commonly offered for the adverse votes on the constitution of 1778, one, which was closely connected with another important advance of the period, was the fact that the document had not been framed by a body especially created and empowered for such purposes. Formal

proposals<sup>1</sup> to prevent any such objections appeared as early as action upon such matters began.<sup>2</sup> Such appeared in the course of the action on the resolve, already mentioned, of September 17, 1776, and became more prominent when, in 1777, the whole question was again presented. The General Court was then empowered to form a constitution, although the proposal so to empower it had met much opposition from those towns which considered that the exercise of the constituent power should be delegated by the people only to a body specifically created for that purpose and for that alone.<sup>3</sup> The opposition was increased by those who supported the council in its earlier refusal to concur with the house in its proposal to form a constitution at the time; and it was further developed by the press.<sup>4</sup> The General Court

<sup>1</sup> Similar proposals had been made already. "A Watchman," writing upon the formation of a constitution by the Assembly, had concluded: ". . . though I should think the mode adopted by some of the Colonies, of electing persons for the expressed purpose of forming the Plan of Government, more orderly." *New England Chronicle*, Powars and Willis, August 29, 1776.

<sup>2</sup> The Convention of Worcester county, Joseph Henshaw acting as chairman on November 26, 1776, favored a special state convention to form a constitution, and voted to urge the view upon the other counties. *Boston Gazette*, no. 1127, December 23, 1776. The proceedings of this convention were later endorsed outside the county; e.g.: *Windsor, Berkshire Co., Lincoln Papers*.

<sup>3</sup> Boston, May 22, 1777, voted unanimously not to instruct its representatives to form a plan of government, and appointed a committee on general instructions. The report of this committee was accepted, May 26, and stated as to a constitution: ". . . we apprehend this matter (*at a suitable time*) will properly come before the people at large, to delegate a *Select Number* for that *Purpose*, & that alone, . . ." *Report of Record Commissioners, Town Records, 1770-1777*, 284-286. I find the instructions also in Almon, *Remembrancer*, 1777, 243, 245; *Boston Gazette*, no. 1150, June 2, 1777; *Connecticut Gazette*, no. 758, June 6, 1777; *Independent Chronicle*, no. 458, May 29, 1777.

<sup>4</sup> "Cato Censorius" supports the position of the council and denies the constituent power of the General Assembly: "The only way then that remains is for the people to form . . . the Constitution: And whenever any doubt arises about their meaning, for the people to explain it. This can only be done by a *special Convention*." *Independent Chronicle*, no. 461, June 19, 1777.

of 1778, acting as a constituent body, was thus from the beginning of its work subject to severe criticism; and it early became clear that the results of its work would meet with determined opposition from the strict adherents of the theory indicated. Even during the sessions of the constituent body objection was made on legal grounds to the participation in such work of certain representatives duly instructed by their towns to pursue an entirely different course.<sup>1</sup>

The question was brought into the contest with reference to the adoption of the constitution, and among the reasons assigned for its rejection the improper character of the constituent body repeatedly appeared.<sup>2</sup> The rejection of the document afforded a natural justification to those who had advanced such views as the one indicated; the logical result of the prominence given to this view and of its subsequent popular vindication was its permanent addition to the effective political rules of the people. That such was actually the result, was shown in the manner in which the new policy was adopted by the representatives of the people assembled in the General Court, when, in 1779, they resumed efforts at a constitutional organization, and when, from the beginning, they acted on the assumption that the next constituent body should be purely such, and should exercise no powers not strictly within the constituent function. The plan of procedure formed by the General Court was sanctioned by the towns; the General Court was authorized to summon as a constituent convention a body distinct from itself, and upon

<sup>1</sup>Thus "A By-Stander" refers to the Boston instructions and to similar instructions from other towns opposed to a constitution at the time, and, addressing the convention, says that "within the walls of your house, gentlemen, there are those who were never empowered by the electors to assist in forming a Constitution; and some, speakers and voters in the Convention in direct opposition to the following instructions of their electors, . . . ." He quotes from the Boston instructions. *Independent Chronicle*, no. 492, January 22, 1778.

<sup>2</sup> Cf. Lexington, June 15, 1778. *Mass. Archives*, 160: 30.

the summons such a convention was elected by the towns. For the first time in the new nation a constitutional convention appeared for which the name was no misnomer; the tentative processes of the earlier days were rejected, and what became the recognized forms of the succeeding century were adopted. Upon another fundamental point Massachusetts thus took advanced ground. Herein again the events of the transitional period show definite progress in her constitutional development. They illustrate, as well, the possibilities which the Revolution offered to the colonists, and make still more striking the manner in which Massachusetts especially began the settlement of constitutional relations according to methods which elsewhere were ignored, and upon principles which elsewhere were much more slowly established.

The recognition of the people as the possessors of the constituent powers, the highest in the commonwealth, and the addition to our constitutional system of a convention distinctively constituent, are of chief importance among the positive results of the transition in Massachusetts. Those alone may justify strong opinions of the importance and significance of the work, although it is not by those simply that such opinions are made possible. With reference to the less fundamental factors of government the time of change was made the occasion for progress. Even in the mere form of the constitution, the work of 1780 showed a marked advance over earlier work elsewhere and especially over that of 1778 in the same commonwealth. In the contents also there was a change, and for the better. Safeguards were made even more secure through greater precision; the protection of civil, political, and religious rights was cared for with shrewdness; and throughout appeared a consciousness of the permanent character of constituent work. Both in form and in theory there was manifested an enduring worth contrasting strongly with the crudeness which was apparent in much of the similar work done elsewhere during the same period.

## CHAPTER VII

### THE CONSTITUTION OF 1778

#### § 1. *Preliminary Action*

THE "resumption" by Massachusetts of the available parts of her charter of 1691 opened, as has been indicated, a distinct period in the history of the development of the new democratic autonomy. The use of such a constitution, originally furnished by the royal hand, continued until the establishment of the new constitution of 1780; so that, strictly, the revival of the charter spans completely the space between the disappearance of the royal governor and the organization of the new commonwealth. The activity of the Provincial Congress, of the headless assembly, and of the constitutional convention, would thus present in apparent completeness the history of the transition; but with a broader view and more inclusive treatment the earlier efforts toward securing a constitution and the proceedings in connection therewith must be considered a very pertinent part of the development.

When, in June, 1775, the Continental Congress gave to Massachusetts the advice for "resumption," a step forward was taken in John Adams' general plan of revolutionary procedure and definite encouragement was given to the rising plans for fit and permanent constitutions. By this time the prospect of an ultimate reconciliation with England was becoming very slight. Hence, the suggestion that a new constitution should be formed might well be acceptable to those who, on general principles, were ready promptly to declare

themselves the source of power. The advice to Massachusetts was in the following November repeated, in a developed form, to New Hampshire and South Carolina; each, early in the next year, established temporary governments. A still more fully matured and more radical form of this advice, now by some treated as direction in the words of suggestion, was in the following May addressed by the Continental Congress to all the governments represented in its membership. By this declaration of virtual independence<sup>1</sup> the establishment of new forms of government on a democratic basis was fully sanctioned by the highest political power then recognized in the new nation. With rapidity and with all reasonable efficiency, new forms were established in all the regions earlier known as colonies of the empire. The occasion for the origin of such, the circumstances of the adoption thereof, the introduction of details of political organization then by no means common, and even the invariable recourse to the certainty of a written document, emphasized both the novelty of the procedure and the fact that arrangements of some permanence were being effected. Everywhere, except in New England and South Carolina, the finality of arrangements was evident. In the last named commonwealth the confessedly temporary constitution of 1776 was replaced in 1778 by one of more permanent character. The earlier freedom from imperial control and other external relations made it easy and natural for Connecticut and Rhode Island to continue operations under their seventeenth century charters with practically complete continuity and with unusual stability. After much delay and discussion the early and crude constitution of New Hampshire was superseded, in 1784, by one intended for permanence. As in the middle

<sup>1</sup> Cf. John Adams, *Familiar Letters*, 173, 174, 195. Cf. "Columbus" in *Loudon's Packet*, no. 24, June 13, 1776. Cf. *Works of John Adams*, II., 489-491; Bancroft, *History of the United States*, Author's Last Revision, IV., 342-345.

and southern provinces, so in Massachusetts, the charter did not readily lend itself to the uses of a constitution. It could serve for temporary purposes, but for nothing further. From the time of its reëstablishment the popular aim, modified now by the exigencies of war, now by the tortuous currents of sectional politics, was toward the supersession of this form of government.<sup>1</sup> On this and allied topics for five years the public mind rested; around this were grouped a mass of reason and opinion of the greatest variety and of strangely divergent types; to this the attention of the assembly and the town-meeting, of the press and of the politician, was directed.

Even in the month preceding the "resumption" of the charter James Warren had written from Watertown that he was relieved "by an Intimation of a probability that you will regulate the Constitution of all the Colonies."<sup>2</sup> In December of the same year Warren, in a letter to Sam Adams, asked: "is it not time to have the Constitution of our Supreem Legislative accurately fixd & fully Established & known."<sup>3</sup> Already an address,<sup>4</sup> supposedly from a Salem man, had thus stated the situation: "We have it now in our hands to establish an everlasting barrier against ministerial influence, and to obtain substantial justice for the people. I mean by carrying back the Constitutions of the several Colonies to their original principles; . . . Until this be done, we . . . must be governed by temporary expedients, . . ."<sup>4</sup> By John Pitts, of Watertown, the situation was thus stated in a

<sup>1</sup> Besides the many proposals for a complete supersession of the charter, mention should be made of the proposal to complete the government under the charter by the election of a governor. *Works of John Adams*, IX., 395, 411. Cf. *Ibid.*, IX., 451.

<sup>2</sup> To [Sam'l Adams]—June 21, 1775. *Adams Papers*, IX., Bancroft Collection.

<sup>3</sup> Jas. Warren, to S. Adams, Watertown, Sept. 19, 1775; *Adams Papers*, IX., Bancroft Collection.

<sup>4</sup> Sept. 8, 1775; 4 *American Archives*, III., 677.

letter of October 25: "At present there appears to me just connection enough [with Great Britain] only to embarrass us, by spending a great deal of time to conform to a Charter w<sup>ch</sup> they have violated in almost every instance." "I think we are under no obligations to trouble ourselves with y<sup>e</sup> charter at all, but especially if it will retard or obstruct exertions for our safety, but attend to a plan best adapted to promote y<sup>e</sup> great cause of Liberty, the origin of government; . . . ."<sup>1</sup>

The conditions of the need were scarcely such as to tend to unanimity either of purpose or of action. Various political theorizings, different views of the relation of circumstances and expediency, and a confused mixture of selfish views and discordant interests, combined to delay and even to obstruct the successful attainment of the end proposed. To cite a single instance of the uncertainty in the political situation, the Berkshire county committee of correspondence opposed the form of government recommended by the Continental Congress, and soon thereafter the action of the county committee was repudiated by the local committees of eight towns concerned.<sup>2</sup> The position of the latter was elsewhere endorsed in the insistence upon complete disregard of old forms, and the creation of a governmental organization entirely new in origin, in sanction, and in content. The advanced views were repeated in a petition<sup>3</sup> from the town of Pittsfield which was presented to the General Court, February 6, 1776,<sup>4</sup> asking that the General Court issue orders for the election of a governor and lieutenant-governor. From the same town<sup>5</sup> a

<sup>1</sup> *Adams Papers*, III., Bancroft Collection.

<sup>2</sup> 4 *American Archives*, V., 807.

<sup>3</sup> *Ibid.*, IV., 1434.

<sup>4</sup> *Journal of the House of Representatives*.

<sup>5</sup> "The first motion towards a regular formation of government seems to have begun in the town of Pittsfield, as early as February, 1776, . . . ." Savage, *Constitution of Massachusetts*, 5. But Pittsfield, Dec. 26, 1775, petitioned the General Court, and declared its "abhorrence of that constitution now adopting in this Province." Smith, *History of Pittsfield*, I., 343, where it is stated that "some action must have taken place earlier, . . . ." Cf. *Ibid.*, I., 343-345.

memorial<sup>1</sup> was on May 29, 1776, presented to the General Court,<sup>2</sup> declaring that the dissolution of the power of Great Britain had left America in a state of nature, and that "the people are the fountain of power." From the former supposition arose the necessity of a constitution of civil government; such a constitution, the memorialists would suggest, should be proposed, not imposed, by the representatives, should be ratified by a majority of the people, and should be subject to the approbation of the Continental Congress.<sup>3</sup>

With politics is involved economics, as when "Worcestrian-sis" mildly suggests that "the form and tenor of our government be lenient and bland, so as to induce men of free sentiments and noble minds to emigrate from other nations, and become the free and willing subjects of an AMERICAN FREE STATE."<sup>4</sup> And, further, as the effect of imminent danger and of repeated campaigns, there appears in the discussion a tinge of pessimism, as in the letter whose writer supported the "opinion that it will be highly impolitick and even madness to spend our time in constructing and refining of *constitutions* to the neglect of necessary defence."<sup>5</sup> This was pungently expressed, somewhat later, by "Marcus Brutus" when, in the *Independent Chronicle*,<sup>6</sup> he wrote: "Let us not then employ ourselves any longer in vain disputes about the

<sup>1</sup> *Mass. Archives*, 181: 42.

<sup>2</sup> The petition and memorial were read in the house, July 1, 1776, and referred to a committee appointed June 6. *Journal of the House of Representatives*.

On June 4 the house resolved to appoint a committee of 9 to report a form of government and a plan of representation. On the next day it was voted to have one from each county on the committee. On June 6 they were chosen, including Hawley and Pickering. I judge that the committee must have remained in activity until Sept. 5, 1776, at least. *Journal of the House of Representatives*.

<sup>3</sup> Cf. John Adams, *Familiar Letters*, 169.

<sup>4</sup> *Mass. Spy*, no. 276, Aug. 7, 1776.

<sup>5</sup> — to —. May, 1776. *Adams Papers*, IV., Bancroft Collection.

<sup>6</sup> No. 457; May 22, 1777.

*form* of government. Let us first see whether we have a country to govern, and ascertain the Lords of the soil."<sup>1</sup> The advance toward a new form of government was retarded by those who spoke for the unrepresented citizens who were absent in the army; it was hindered by those who wished to postpone the adoption of constructive measures until calm should be restored; it was opposed by those who believed the existing forms were adequate to the needs of the immediate future. It was also emphatically renounced by the class which "do not like a form of government when courts are set up and men are forced to pay their debts," whose opinions "a Berkshire Man" voiced in the warning that if the "General Court does establish such a form of government, we shall think them all tories—we shall never like it and for our own sakes as well as for the sake of our posterity, we are determined never to submit to it."<sup>2</sup>

However, what have been called the advanced views had been given to the public from high authority when, in August, John Adams, in a letter to Francis Dana, had said that "the right of the people to establish such a government as they please, will ever be defended by me, whether they choose wisely or foolishly."<sup>3</sup> Of this line of teaching the natural, as well as the most effective, outcome was the assembly resolve of September 17, 1776, when it was proposed to bring to a direct vote in each town the question of empowering the house and council, acting as one body, to form a constitution, and the further question of ordering the pub-

<sup>1</sup> Cf. "Hampden" in the *Pennsylvania Evening Post*, vol. II., no. 290, November 28, 1776: "For Heaven's sake let all disputes about frames of Government subside for the present, or we shall be obliged to receive a Government from the sword of a proud and successful enemy." This is reprinted in 5 *American Archives*, III., 890, 891.

<sup>2</sup> *Boston Gazette*, no. 1113; Sept. 16, 1776.

<sup>3</sup> Philadelphia, Aug. 16, 1776. *Works of John Adams*, IX., 430.

lication of such constitution for "perusal" by the inhabitants before it should be established by the General Court.<sup>1</sup>

Such a definite step toward the exercise of constituent powers defined public thought and aroused public expression. To determine the theory of the situation, and to help in further procedure, the town of Billerica early<sup>2</sup> declared that the tyranny of Great Britain and the dissolution of connection between that country and her colonies had "broken up the Constitution of this Province," and asserted that it had "now become necessary, for the prevention of anarchy, for the preservation of internal peace and good order, and for the Mutual security of the Inhabitants in the enjoyment of their property and just rights, that some form of government be speedily erected; . . ."<sup>3</sup> Stoughton repeated the assertion that "this State is at present destitute of a fixed and established Form of Government,"<sup>4</sup> suggesting at the same time a series of county conventions with a subsequent state constitutional convention. As to procedure also, the town of Bellingham voted that "it should be proper that the form of Government for this State to originate in each town, and by that means we may have the ingenuity of all the State," and proposed that in each district thirty miles or less in diameter a constitutional convention be held including in its membership one in every thirty inhabitants, that the results be revised by the towns, that the deputations from each local conference join in a state conference, and that this body finally call a state convention to form a constitution, "so that they add nothing to, nor diminish nothing

<sup>1</sup> *Boston Town Records*, XVIII., 247.

<sup>2</sup> October 14, 1776.

<sup>3</sup> *Mass. Archives*, 156: 162. A transcript is in the *Lincoln Papers*.

<sup>4</sup> *Powers & Willis' Independent Chronicle*, 425; Oct. 10, 1776. Also in *Mass. Archives*, 156: 125, where the spelling is "Goverment." *The Independent Chronicle* on December 26, 1776, had an account of the proceedings of the Worcester county convention concerning the need of government.

from the general sense of each town."<sup>1</sup> The town of Ashfield stood out early as a champion of the single legislative body<sup>2</sup> and declared its platform of general principles when it "Voted that it is our Opinniu that we do not want any Goviner but the Goviner of the univarse, and under him a States Ginalar to Consult with the wrest of the united stats for the good of the whole, . . ."<sup>3</sup> The towns produced a mixed mass of political philosophy and of practical politics that avoided philosophy; the press began to abound with vigorous extracts from town records and with every variety of political literature.<sup>4</sup> Of the latter material in the press of Massachusetts probably few contributed more in these years than did the Roxbury clergyman, Dr. Gordon. At this time he opposed the single legislative body, as well as multiple office-holding, quoting thereon the Virginia constitution and concluding: "I humbly apprehend, that sooner or later we must follow in the main the example of the *Virginians*, or rue the consequence."<sup>5</sup> Concerning his hopes of Massachusetts regaining her former political condition, his belief was thus tersely expressed: "Nothing will be more likely to promote these valuable ends, next to the good morals of the people, than a proper form of government, securing and perpetuating to every man and his posterity the full enjoyment of their rights and privileges, civil and sacred."<sup>6</sup>

Amid all this there was one barrier to success, when, on October 16, Boston refused to empower its representatives

<sup>1</sup> *Lincoln Papers*.

<sup>2</sup> As also, e.g.: New Salem; Cf. *Mass. Archives*, 156: 366.

<sup>3</sup> *Mass. Archives*, 156: 131.

<sup>4</sup> For returns to the resolve of Sept. 17, 1776, see, for example: Blake, *History of Warwick*, 55; *Weston Records*, 230; Clark, *History of Norton*, 425, 426; *Annals of Mendon*, 348, 349; Hazen, *History of Billerica*, 238, 239; Perry, *History of Bradford*, 29; Adams, *Address at Acton*, Boston, 1835, 17, 18.

<sup>5</sup> 5 *American Archives*, II., 228. Cf. *Ibid.*, I., 1284-1288.

<sup>6</sup> 5 *American Archives*, II., 227.

to frame a constitution. There was a call to cautious and deliberate action, and an appeal was taken also by the capital to the politically effective issue of equality of representation.<sup>1</sup> Already John Adams had written to Hawley: "Equality of representation in the legislature is a first principle of liberty, and the moment the least departure from such equality takes place, that moment an inroad is made upon liberty."<sup>2</sup> In connection with this matter it has been said that "the most influential cause that led to a new model of the form of government arose from the great mistake of the first Legislature,"<sup>3</sup> in their act on representation passed by the house on August 17, 1775.<sup>4</sup> By this representation was made unequal and too full,<sup>5</sup> and occasion was given for such activity as that of the Essex county convention of April 25, 1776, by which a memorial<sup>6</sup> was

<sup>1</sup> *Boston Town Records*, XVIII., 248. The vote of the meeting of October 11-16 is in *Mass. Archives*, 156: 160.

<sup>2</sup> J. Adams, to Jos. Hawley, Philadelphia, August 25, 1776; *Works of John Adams*, IX., 435.

<sup>3</sup> James Savage, *Constitution of Massachusetts*, 5.

<sup>4</sup> Every town of thirty freeholders qualified to vote for representatives was to send one representative, and as many more as the earlier law allowed; every incorporated district having all rights except representation was given that right and made a town. *Charters and General Laws of Mass.*, 796-798. This act was introduced by Major Hawley; for its course in the house, see *Journal of the House of Representatives: begun July 19, 1775; 45, 53, 57, 67, 76. Acts and Resolves of the Province of Mass.*, V., 419, 420.

<sup>5</sup> Cf. Vote of Hingham, May 23, 1776. Lincoln, *History of Hingham*, 106.

<sup>6</sup> In this convention seventeen towns were represented by twenty-two delegates. Danvers and Beverly subsequently agreed to the action taken. The memorial states: ". . . we fear that if a different Mode of Representation from the present, is not adopted in this Colony, our Constitution will not continue, to that late Period of Time, which the glowing Heart of every true American now anticipates —" "if an Equality of Representation takes place in the Colony, we shall be satisfied, whether it has Respect to Numbers, to Property or to a Combination of both." It further states that a single town in Essex county pays more taxes than thirty other towns and districts, that a majority in the General Court could be secured from towns that do not pay one-fourth of the taxes, and

presented to the General Court; the committee report thereon was followed by the act of May 4, 1776, allowing three representatives for 220 electors, four representatives for 320 electors,<sup>1</sup> and so on upwards. By this the inequality in the representation of the towns was said to have been removed, but the house was made so numerous as to be unwieldy.<sup>2</sup> Furthermore, a number of vigorous protests were elicited by the fact that this law was not promulgated until after the issue of writs for the May election, so that on election day towns within twenty miles of the General Court knew nothing of the new statute under which they were supposed to be acting. The assertion that the act had made the condition of affairs even worse than before was strengthened by the opinion that the act was nothing less than illegal.<sup>3</sup> The effect of all this upon action concerning the resolve of the assembly of September 17 was indicated when

that Essex county pays more than one-sixth of the taxes, but sends only one-tenth of the representatives. *Mass. Archives*, 159: 192. Reprinted in *Acts and Resolves of the Province of Mass.*, V., 542, 543.

<sup>1</sup> Cf. Savage, *Constitution of Massachusetts*, 6. Cf. *Acts and Resolves of the Province of Mass.*, V., 502, 503. *Charters and General Laws of Mass.*, 694. The act was introduced, read three times, and passed to be engrossed, in one day. *Journal of the House of Representatives*, 242, 244, 245.

<sup>2</sup> *Boston Town Records*, XVIII., 234, 235.

To the house of July, 1775, 205 members were returned; to that of May, 1776, 266 members. Of the difference of 61, certain counties had fewer representatives, while there was an increased representation of 23 from Suffolk county, 25 from Essex, 10 from Middlesex, and 7 from Plymouth. *Journal of the House of Representatives*. The effect upon inland counties of the suddenness with which the act was passed appears in the representation of Worcester county, 1775, 37; 1776, 34, 1777, 62; of Hampshire county, 1775, 25, 1776, 27, 1777, 41; of Berkshire county, 1775, 7, 1776, 11, 1777, 20. *Ibid.* A motion to repeal the act was defeated, June 4, 1777. *Journal of the House of Representatives*.

<sup>3</sup> "Centinel" in *Mass. Spy*, 298; Jan. 16, 1777. The author of this article claimed that the Act made too large an Assembly and entailed too great an expense on the remote towns; he even suggested the possibility of county congresses and a provincial conference to repeal the act before the next election. Cf. *Worcester Town Records*, 291.

the town of Sutton spoke of the house as a "very unequal representation," and also as illegal, many of its members having been "chosen by virtue of a pretended law made after the precepts went out for the election of the House."<sup>1</sup> From this arose the objection of the town to the formation and ratification of a constitution by such a house. The same day the town of Oxford adopted a committee report opposing the enactment of a constitution by an assembly which was such a "very unequal representation,"<sup>2</sup> and the trend of action thus fostered helped in the distinct rejection of the September proposals. However, the refusal of the towns to confer constituent powers upon the General Court involved merely the defeat of a method of securing change without a denial of its need. The general recognition of the necessity of some alteration in political forms was modified by divergence of views as to the time for action and concerning the extent and thoroughness of the reconstruction.

After a brief period<sup>3</sup> of comparative political quiet the project of reorganization was taken up by the house of representatives, which on April 4 adopted and sent to the council for concurrence a resolve<sup>4</sup> recommending that the people in the approaching election should empower their representatives to form a constitution for submission to the towns. The council, in its message in reply, suggested that the people had already too much to attend to, that a new constitution would help matters neither externally nor internally, and that

<sup>1</sup> October 7, 1776; 5 *American Archives*, II., 936. Cf. Benedict and Tracy, *History of Sutton*, 99.

<sup>2</sup> 5 *American Archives*, II., 936, 937.

<sup>3</sup> On January 27, 1777, after the result of the returns on the resolve of Sept. 17, 1776, had been reviewed, the house of representatives received a committee report proposing that for one year of a body, of the same size as the assembly, should be elected to frame a constitution. No action is indicated. *Mass. Archives*, 137: 138-141.

<sup>4</sup> Original Bill in *Mass. Archives*, 156: 200-202.

with the removal of the governor the people had secured sufficient power. "There is such a variety of sentiments upon this head, that we believe no particular plan can be proposed but that will meet with very great opposition from some quarter or other. . . ."<sup>2</sup> The distracted career of Pennsylvania, that "recent instance of the dangerous effects of so great an alteration of government," was held up as a gloomy example, coupled with the fear that similar result might be expected from such an attempt in Massachusetts. The lower house, however, on the 21st,<sup>3</sup> maintained its position of the 4th and asked for a reconsideration by the council, assuring them that their views and acts were controlled by the general opinion of the "People, who have at all Times a Right to form or alter a Constitution,"<sup>4</sup> and that "ever since the Declaration of Independence, we conceive a great Part of our Constituents have been expecting that a new Constitution would be formed, or some Alterations made in the present."<sup>5</sup> The opposition to the lower house was now voiced, for one,<sup>6</sup> by "Philadelphus" who claimed that "at this time,

<sup>1</sup> Cf. "Philadelphus" in *Independent Chronicle*, no. 452, April 17, 1777; . . . "every man within the State has his own sentiments upon government, and the minds of the people are more desonant upon this, than upon their mode of worship, or any other subject: and every one who is disappointed in his notions or plan, or who shall not obtain his *private vicious* in the new mode, will affect to be abused, will collect a party, and call all the rest tyrants: And in the present situation of public affairs, if one sixth part of the people should be against the form fabricated by this venerable convention, it never could be rendered coercive."

<sup>2</sup> *Mass. Archives*, 158: 78.

<sup>3</sup> It was on April 29, 1777, that the house resolved, fifteen of the council concurring, "That such unincorporated plantations as are Taxed to this State be and hereby are empowered to join in the choice of Representatives with such Town where they are taxed." *Acts and Resolves of the Province of Mass.*, V., 511, reprinted from Council Records, XXXVII., 251.

<sup>4</sup> *Mass. Archives*, 158: 81-83.

<sup>5</sup> April 21, 1777; *Mass. Archives*, 158: 81-83.

<sup>6</sup> "Hannibal," who in the autumn of 1776 favored a Constitution, writes: "But now it is wrong *toto caelo*;" all energy should be put on the war, and, at

to begin a new mode of government, to set people by the ears in a contention about the rights of elections, to dissolve all government, to step into a state of nature, where there is no hopes [sic] of emerging from it, and to bring old chaos back again," could "be the work of only madmen or fools."<sup>1</sup> On the other hand, the people of Massachusetts had already seen nine new constitutions of varying degrees of excellence, they had been able to read not only the general political pamphlets of the time but also, to a less extent, the special works of Carter Braxton<sup>2</sup> and John Dickinson on forms of government, and the writings of John Wise<sup>3</sup> on ecclesiastical polity; they were acting as well as thinking along the lines of John Adams' "Thoughts on Government,"<sup>4</sup> and of the tract entitled "The People the Best Governors."<sup>5</sup> To all appearances political education<sup>6</sup> was now sufficiently extensive and definite to equip the people for the special task before them. The general and apparent readiness for the work

all events, the General Assembly should never form a Constitution. *Independent Chronicle*, no. 457, May 22, 1777. Cf. "Marcus Brutus" in *Independent Chronicle*, no. 446, July 17, 1777.

<sup>1</sup> *Independent Chronicle*, no. 452, April 17, 1777.

<sup>2</sup> See Sabin, *Bibliotheca Americana*, no. 7466.

<sup>3</sup> Cf. Dexter, *Three Hundred Years of Congregationalism*, 498, 501, 502. Tyler, *History of American Literature*, New York, 1879, II., 104-116. Clark, *History of the Congregational Church in Mass.*, 119. Doyle, *The Puritan Colonies*, London, 1887, II., 486, 487.

<sup>4</sup> Printed in *Fssex Journal*, no. 148, November 1, 1776. Cf. 4 *American Archives*, IV., 1136-1140; *Works of John Adams*, IV., 189-200. See Sabin, *Bibliotheca Americana*, no. 251.

<sup>5</sup> Cf. an article by the present writer on "The People the Best Governors," in *The American Historical Review*, vol. I., no. 2.

<sup>6</sup> The press was active in political matters; e. g.: the *Independent Chronicle*, no. 446, Mar. 6, 1777, published a new constitution of 43 articles; the *Boston Gazette*, no. 1179, Dec. 22, 1777, published a four column "Constitution of the American Republic," by a confessedly obscure farmer; the 60 articles of this were written "all in the Interval between Ten o'Clock, A. M. and Two o'Clock, P. M."

increased the weight of authority with which the lower house could speak; and, on May 5, the house bill passed the General Court. By this it was recommended that the towns at the coming election should empower their representatives to take part as members of a constituent body, in the formation of a new constitution, to be submitted to the towns for their action,<sup>1</sup> and to be established by the General Court after having been approved by two-thirds of the freemen of the state, who were twenty-one years of age.<sup>2</sup> This proposed step met the immediate opposition of the capital. Not only were self-denying ordinances broached, but Boston as well suggested a special convention at a suitable time, and had "*peculiarly in View making the Council intirely independent of the House, & to prevent the lately too prevalent Custom of accumulating Offices in one Persone; . . .*"<sup>3</sup> In spite of such and other opposition, the recommendation of the General Court was, in the May elections, adopted by a sufficient number of towns, and a majority<sup>4</sup> of representatives were returned fully authorized to share in the formation of a new constitution.<sup>5</sup>

## § 2. *Work of the Convention*

Pursuant to the act of May 5, 1777, the Massachusetts

<sup>1</sup> Cf. "Hints for a form of government," *Penn. Evening Post*, II., 232, July 16, 1776.

<sup>2</sup> Two original prints of this are in *Mass. Archives*, 213: 472, 473. The original drafts of the Resolution, with the disagreements, amendments, etc., are in *Mass. Archives*, 214: 3-9.

<sup>3</sup> This action of May 26, based on the vote of May 22, is in *Report of Boston Record Commissioners, Boston Town Records, 1770-1777*, 284-286. The Instructions of Boston to her Representatives are in *Boston Gazette*, no. 1150, June 2, 1777; *Connecticut Gazette*, 768, June 6, 1777; *Independent Chronicle*, 458, May 29, 1777; Almon's *Remembrancer*, 1777, 243-245.

<sup>4</sup> A. H. Bullock, *Centennial of the Mass. Constitution*, 12.

<sup>5</sup> *Journal of the House of Representatives, Begun May 28, 1777*, 15, 24, 25.

assembly of 1777<sup>1</sup> resolved itself, on June 17,<sup>2</sup> into a constituent convention, and, having effected an organization,<sup>3</sup> proceeded at once to the appointment of a special committee<sup>4</sup> on the constitution. After the transfer thus to seventeen members of the main portion of the work in hand, the convention quietly awaited the committee's report. The sessions of the full convention occupied three more days in June, on the last of which, June 30, Samuel Adams, in Philadelphia, was writing to his friend Warren: "I find by the Newspapers that the Genl Assembly under the Denomination of a Convention are forming a new Constitution. This is a momentous Business. I pray God to direct you."<sup>5</sup> But the progress of the constituent work was not rapid. The convention sat at intervals,<sup>6</sup> and noted the lack of progress on the part

<sup>1</sup> An incomplete list of this Assembly is in the *Boston Gazette*, 1150, June 2, 1777.

<sup>2</sup> Cf. *Journal of the House of Representatives*, Begun May 28, 1777, 27, 28. Few references to the convention appear in the house journal. Cf. *Ibid.*, 29, 129.

<sup>3</sup> Jeremiah Powell was chosen Chairman, and Samuel Freeman, Clerk.

<sup>4</sup> According to James Savage, *Constitution of Massachusetts*, p. 8, five were chosen at large, and one of the remaining twelve was taken from each of the counties, except Dukes and Nantucket.

On June 17, the Convention appointed to this Committee, Thos. Cushing, John Pickering, James Prescott, John Bliss, George Partridge, Daniel Davis, R. T. Paine, Jos. Simpson, Seth Washburn, Jeremiah Powell, J. Taylor, and John Bacon. On June 18 the Convention appointed James Warren, Azor Orne, Noah Goodman, Capt. Isaac Stone, and Eleazar Brooks, at large. *Mass. Archives*, 156: 268-274. The list of the above seventeen is given in the *Boston Gazette*, June 23, 1777. Bradford, *History of Mass.*, Boston, 1825, II., 140, gives a list of only twelve, four of the Council and eight of the House.

Bullock, *Centennial of the Massachusetts Constitution*, 12, says: "It is one of the omissions in our annals that the proceedings of this committee were never given to public inspection." But James Savage had a copy of the journal of this committee; see James Savage, *Constitution of Mass.*, 8. Bullock, op. cit., 12, calls this "a joint committee of the Council and assembly . . . ."

<sup>5</sup> S. Adams to [Jas. Warren], Philadelphia, June 30, 1777. *Adams Papers*, IX., Bancroft Collection.

<sup>6</sup> After July, the Convention met on August 14; and also on September 18, when it ordered the Committee to meet as often as possible.

The Convention met on October 2 and October 16, and on neither day was the

of its committee. A contributor to the *Massachusetts Spy*<sup>1</sup> wrote, as early as September, that "we must soon expect some form or moddle of a Constitution." Still the committee needed much prodding, and its report was more than a fortnight distant when, on November 22, Samuel Otis wrote to Elbridge Gerry: "There is great expectation of a new form of government in our state. I hope it will be a good one, and an executive power will be lodged somewhere; at present, if there is any, you would be puzzled to find it: hence the chariot wheels drag so slowly."<sup>2</sup> At last, on December 11, the committee made its report,<sup>3</sup> and asked leave to sit again. The convention, however, seized this opportunity and ordered 300 copies of the report printed<sup>4</sup> solely for the use of members of the convention, and in January began the active consideration<sup>5</sup> of the contents. In the earlier half of that month nine days were given to the work,<sup>6</sup> in the course of

Committee ready; on December 3 the Committee asked for more time. *Mass. Archives*, 156: 268-274.

<sup>1</sup>"A. B." in the *Mass. Spy*, 332; Sept. 11., 1777.

<sup>2</sup>Samuel A. Otis, Boston, Nov. 22, 1777, to E. Gerry. J. T. Austin, *Life of Elbridge Gerry*, I., 266.

<sup>3</sup>"John Adams has been generally believed to have drawn up the first report to the general committee of both instruments; . . . ." T. C. Amory in *New England Historic Genealogical Society, commemorative proceedings*, 26. According to W. V. Wells, *Life of Samuel Adams*, III., 1, 2, in the formation of this constitution John and Samuel Adams probably took no part.

<sup>4</sup>A copy of this edition of the report and of the Resolve of Dec. 11, 1777, an 8 pp. pamphlet, is in the *Sparks Papers*, XLIX., II., 329, Harvard College Library. A copy of the same, printed on large paper, with the clerk's minutes in the margin, is in *Mass. Archives*, 156: 202-210. A manuscript of the same, possibly as used in sending the matter to the press, is in *Mass. Archives*, 156: 211-233. A second manuscript is in *Mass. Archives*, 156: 235-263.

<sup>5</sup>The Resolve of Dec. 11, 1777, had postponed consideration of the report until the second Thursday of the next session of the Assembly.

<sup>6</sup>Alden Bradford, *History of Massachusetts*, Boston, 1825, II., 140, says the committee reported a draft of a constitution to the Assembly in January, 1778. With

which eight articles were accepted, one adopted with slight change, and three recommitted;<sup>1</sup> a fourth, article 24, was, on January 31, recommitted to a special committee of nine. The report<sup>2</sup> of this committee was adopted on February 3, and involved a rejection of the theories and claims of those who would accord equal representation to all towns; this action was emphasized on the same day by the refusal of the convention to approve the granting even of a single representative to every incorporated town. The latter action, however, was subsequently revoked by the convention when less fully attended.<sup>3</sup>

The proceedings of the constituent body occupied the greater part of February; but their course was marked by few acts of special note. The governor was denied the veto power,<sup>4</sup> freedom of conscience and worship was granted to Protestants, and the assembly was denied the power to revise, at intervals of seven years, the apportionment of representation. By an

equal inaccuracy, he says, *Ibid.* II., 158, that the same committee reported a draft of a constitution to the Assembly in December, 1777, and that this was not considered by the Assembly until February, 1778.

<sup>1</sup> The Convention accepted Articles 1, 2, 3, 4, 5, on Jan. 15, Articles 7, 8, 9, on Jan. 16. Article 12 was passed without the 65-year age limit on Jan. 23. Articles 6, 10, and 11 were recommitted. *Mass. Archives*, 156: 274-282.

<sup>2</sup> This report included the apportionment of one representative to every town of 100 voters; 2 representatives to 300 voters; 3 representatives to 520 voters; 4 representatives to 760 voters, and so up to 20 representatives for 7320 or more voters. An increment of 20 was added at each step to the additional number of voters required for an additional representative. This report was accepted, "81-134." *Mass. Archives*, 156: 283-285.

<sup>3</sup> In connection with Article 24, an effort was made, and defeated, on February 26, to give every town one representative, and two representatives for a town of 500 voters, and so an extra representative for each additional 500 voters. *Mass. Archives*, 156: 288-290. The Convention, on February 29, voted that each town should pay and send to the Assembly one representative. The vote was probably 66 out of 93. *Mass. Archives*, 156: 291-293.

<sup>4</sup> On February, 24, by order of the Convention, Messrs. Cushing and Pickering reported: "The Governor shall have no negative."

ominously scant vote<sup>1</sup> the whole document was accepted<sup>2</sup> on February 28. It was ordered to be arranged, and 600 copies were printed for distribution; and on March 6 the committee on this latter work was directed to have the constitution printed in all the Boston papers.<sup>3</sup> "Then the Convention<sup>4</sup> was dissolved." By a resolution<sup>5</sup> of March 4 the assembly submitted the newly formed constitution to the action of the freemen in their town-meetings, and suggested the propriety of empowering the representatives in the next assembly to establish the constitution, in case it should have been approved by the people.

The document thus offered to the people was the eleventh constitution which had been formed by recognized authority during the revolutionary period, and the first upon which an opportunity of action and expression was granted to the voting population. It was merely a collection of thirty-six unclassified articles, preceded by a resolution of the constituent body. The latter mentioned the Declaration of Independence, and quotation was made from the resolution of the assembly of May 5, 1777, making clear the authorization of the council and house to act together as a constituent body and to submit to the people the constitution they had

<sup>1</sup> 39 out of 53.

<sup>2</sup> Bullock, *Centennial of Mass. Constitution*, p. 12, loosely and inaccurately says it "was approved by the two bodies February 28th. 1778, . . ."

<sup>3</sup> The Constitution and the Assembly Resolve of March 4 were published in the *Boston Gazette*, no. 1229, March 23, 1778, with no comment except that some advertisements were crowded out. See the Constitution also in the *Independent Chronicle*, no. 500, March 19, 1778, and in the *Mass. Spy*, no. 361, April 2, 1778. The Constitution and the Assembly Resolve of March 4, 1778, were published in 1778, at Boston, by J. Gill, Printer to the General Assembly. A copy of this pamphlet is in the Library of Harvard College. The Constitution has been printed in *Journal of the Convention of 1779-'80*, Boston, 1832, 255-264.

<sup>4</sup> The Proceedings are in *Mass. Archives*, 156: 268-293.

<sup>5</sup> The original is in *Mass. Archives*, 217: 292-294.

formed. In the constitution itself appeared no preamble, aside from what has been already indicated; nor did it contain a declaration of rights. There was no assurance of general religious freedom or of civil liberty. There was no declaration concerning the nature or the theory of the state. The provisions concerning the organization of government were not of unusual excellence. An annual bicameral legislature was established; the basis of representation was for each house distinct. For the lower house the principle of town representation obtained; every incorporated town was "entitled" to one representative, a town of 300 voters might send two, a town of 520 voters might send three; the increment necessary to secure an additional representative being at each advance increased by twenty. The number of senators, however, was fixed at twenty-eight, chosen unequally from four districts. Both the representatives and senators were to be voted for at the May elections, but in the case of the latter preliminary steps were required as well. These were that in November of each year the voters in town-meetings should nominate for each district candidates to be considered at the May elections. The result of such nomination by ballot should be submitted to the General Court, from which was returned, for final choice at the subsequent spring elections, a list of those highest on the list of nominees and double the number of senators assigned to the respective districts. In the election of representatives the franchise was granted to every free male of full age,<sup>1</sup> who had paid taxes, unless excused, and who had resided one full year preceding the election in the town where he claimed the right to vote; or who, in broad terms, was one of whom "such town has been his known and usual place of abode for that time, or that he is considered as an inhabitant thereof; . . . ." The electors of the governor, lieutenant-governor,

<sup>1</sup> The franchise, however, was withheld from negroes, Indians, and mulattoes.

and senators, should be similarly qualified, but should in addition be "worth sixty pounds, clear of all charges thereon, . . . ." It was required that senators and representatives<sup>1</sup> should have been, for one year preceding the election, inhabitants of the districts or towns they represented. Each member of the upper house, furthermore, should own an estate of £400, at least one-half of which should be realty in the district he represented; and each member of the lower house should own an estate of at least £200, one-half of which should be realty in the town represented. To the bodies thus created were granted the usual privileges of control over their own procedure, and the usual functions, the lower house receiving important special powers, among which was that of originating all money bills, which should "be concurred or non-concurred in whole by the Senate." To the General Court was assigned the creation of judicial courts, but it was provided that the judges should hold office during good behavior, and from the terms used it was apparent that a continuation of the previously existing system was intended.

The chief of the executive department, the governor, was to be elected annually on the franchise already indicated; his own qualifications were to be a residence in the state for five years preceding his election, and the possession of an estate of £1000, at least one-half of which was to be realty within the commonwealth. A further qualification of importance, which applied as well to the lieutenant-governor, the senators, representatives, and all judicial officers, was that they should believe in the Protestant religion. The executive, furthermore, was peculiarly limited. The power of pardon, thus, was vested

<sup>1</sup> A seat in the General Court was refused to Judges of the Superior Court, Secretary, Treasurer General, Commissary General, and settled Ministers of the Gospel, and military officers under pay; a seat in the Senate was refused to Judges and Registers of Probate. Art. 4.

in the governor, lieutenant-governor and speaker of the house, or any two of them. The governor's powers as head of the military forces were placed under the control of the General Court. The power of the executive to prorogue the General Court during a recess, to issue public money by warrant, and in most cases the appointing power, were modified by the provision which made it compulsory for the governor to act on the advice of the senate. Of this body the governor, as such, was a member with voting power, and it was provided that he should have "no negative, as Governor, in any matter pointed out by this constitution to be done by the Governor and Senate," although for the transaction of business the presence of himself or of the lieutenant-governor was necessary.

For the less important functions of government imperfect provision was made in several further disconnected articles. The common law and the statute law previously recognized in the courts were to remain in force, "and all parts of such law as refer to and mention the council shall be construed to extend to the Senate." Complete in some particulars, in others the document was inadequate either to meet the needs of the situation or to coincide with the ideals of the public, as soon was made plain in the action of the towns.

### *§3. Submission of the Constitution*

In no series of acts had the provisional governments shown the possibilities of their position more distinctly than in the manner in which the newly formed constitutions were promulgated or established. Sufficient care was not taken by the controlling powers to secure final sanction by the people. The seriousness of such arbitrary procedure cannot be underestimated, although at the time an harmonious majority waived all questions of propriety in view of the greater problem involving their very existence as

political societies; regardless of constitutional details, practical unity of action must be assured, and the state, as they conceived it, must be preserved. To effect this the majority must express unopposed the will of the whole political society; the minority must be unheard, unfelt. Thus with warfare on all sides, with tories in many sections, with booming of British guns often audible even in a constituent convention, it was certainly a time when the "disaffected" minority should be kept silent. To prevent the possibility of any expression from this quarter, was the need of the politician; to meet this difficulty, and to respond to the further exigencies of the time, the salutary, even if thoroughly arbitrary, practice just mentioned was adopted. The shifting of the seat of war relieved Massachusetts of one of the strong reasons for such procedure; the unity and patriotism of her population removed any fear of an actually hostile minority; and the existence already of a frame of government which was useful for temporary purposes freed the attempt to change the governmental system from any danger of violence at the hands of the minority. Breaking wholly with the past, and yielding to the desires of the people which had been distinctly stated, the assembly of Massachusetts made suitable arrangements for the submission of this new constitution of 1778 to the people. In accordance with the direction of the assembly, the constitution was transmitted to the various boards of selectmen, whose duty it became both to submit the document to the voters assembled in town-meeting and to make official return to the secretary of the commonwealth of the action taken thereon by the town.

The opportunity thus afforded for local action was quickly developed into an occasion for definite and vigorous expression of local sentiment. Seldom was the return of a local vote unaccompanied by some plain criticism or blunt suggestion; so that for the varied actions of the towns ample

and equally various reasons were given, all expressing the opinions of the majority of voters in each locality with clearness sufficient for their own satisfaction. In the announcement of general theories and the argument on local advantages may be read the popular indictment of the proffered constitution. No demand was more general than that for a bill of rights which should embody the best results of experience and the highest impulses of the present; a statement which, as the town of Beverly instructed its representative, "we conceive, ought to describe the Natural Rights of Man as he inherits them from the Great Parents of Nature, distinguishing those, the Controul of which he may part with to Society for Social Benefits from those he cannot;"<sup>1</sup> or which, "Clearly Asserting the rights of the people, as men, Christians, & Subjects, Ought to have Preceeded the Constitution, and these Rights should be Express'd in the fullest and and most unequivocal terms."<sup>2</sup> So the town of Greenwich early rejected the instrument as it "Intirely Divests the good People of this State of Many of the Priviledges which God and Nature has Given them,"<sup>3</sup> and its vote was confirmed by the action of many other towns. Incomplete theoretically, the constitution was deemed practically ineffect-ive and indefensible. The improper composition of the convention, the illegal action of some of its members,<sup>4</sup> and the absence of any mode of amendment "Except by Coercion and Violence,"<sup>5</sup> were a few among many facts serv-

<sup>1</sup> June 1, 1778, *Mass. Archives*, 156: 429-432.

<sup>2</sup> Plymouth, May 18-June 1, 1778. *Mass. Archives*, 156: 426.

<sup>3</sup> May 5, 1778. *Mass. Archives*, 156: 275.

<sup>4</sup> E.g.: "A By-Stander," advising the Convention: "Within the walls of your house, gentlemen, there are those who were never empowered by the electors to assisting in forming a Constitution; . . ." *Independent Chronicle*, no. 492, Jan. 22, 1778.

<sup>5</sup> Plymouth Committee Report, May 18-June 1, 1778. *Mass. Archives*, 156: 426.

ing to emphasize the opportunity, which was readily taken, for searching and severe criticism. Thus even little Petersham proposed, among other things, to economize by electing a senate from the house, suggested a property qualification for electors and an increased quorum in each house,<sup>1</sup> objected to a final negative in either house, grappled with the problem of corruption, decried even such titles as governor and lieutenant-governor, and expressed its purpose "to put a stopt to the first seeds of ecclesiastical tyranny;" for "Lords Spiritual soon become Lords Temporal. . . ."<sup>2</sup>

Very creditable was the thoroughness of the consideration,<sup>3</sup> as well as the confident directness of the instructions given to the representatives. Attention was called to a great variety of excellences and dejects. Thus some would even advocate the abolition of the offices of governor and lieutenant-governor, and of the senate;<sup>4</sup> others girded themselves for a vigorous contest over the relations between church and state;<sup>5</sup> still others urged the inconsistency of granting a voice either in sanctioning or disapproving the con-

<sup>1</sup> Cf. *Result of the Convention at Ipswich*, p. 5.

<sup>2</sup> *Mass. Spy*, no. 368, May 21, 1778.

<sup>3</sup> The town of Royalston, in its meetings of April 9, May 4, and May 27, adopted and recommended a new constitution of 35 articles. *Mass. Archives*, 156:306-317.

"An Old Roman" who plans to "follow the vestigia and traces of nature, . . ." published a new constitution, in the *Boston Gazette*, no. 1230, April 13, 1778, in which provision was made for one legislative chamber and no real executive. Cf. Lexington, June 15. *Mass. Archives*, 160: 24. Cf. Boothbay, May 20. *Mass. Archives*, 156: 368-373.

<sup>4</sup> Cf. Greenwich, May 5. *Mass. Archives*, 156: 275. Cf. *Independent Chronicle*, 501, Mar. 26, 1778, where "Occolampadius" objected to Gov., Lt. Gov., and Council, and proposed the appointment of town officers by the towns and of county officers by county conventions.

<sup>5</sup> Cf. Letter by "Mentor" in *Boston Gazette*, Jan. 26, 1778; letters by "Hieronymus" in *Ibid.*, Nov. 2, 1778, Dec. 28, 1778, Jan. 18, 1779; letters by Isaac Backus in *Ibid.*, Dec. 14, 1778, Feb. 22, 1779; cf. *Ibid.*, Feb. 1, 1779, *et passim*.

Cf. Isaac Backus, *A Church History of New England*, Providence, 1784, II., 322.

stitution to those black and copper colored persons who were to be by it forever afterwards disfranchised.<sup>1</sup> "A Watchman" voiced a proper sentiment when he complained that an insufficient period was allowed for public consideration of the document.<sup>2</sup> The height of philosophy and philanthropy was attained by the men of Georgetown when they offered their objection "because in the Fifth a man being born in Africa, India or ancient America or even being much Sun burnt deprived him of having a Vote for Representative."<sup>3</sup> On the more positive side appeared a variety of suggestions about the exercise of the constituent power, the composition of the legislative bodies,<sup>4</sup> and the basis of representation. A demand was made for rotation in office;<sup>4</sup> and a clearer demarcation between executive and legislative functions was proposed.<sup>5</sup> To many minds,

<sup>1</sup> Cf. *Mass. Spy*, no. 364, April 23, 1778.

<sup>2</sup> May 25, 1778, *Mass. Archives*, 156: 407.

Sutton, May 18, voted that this article seemed "to wear a very gross complexion of slavery," and to be repugnant to the "grand and Fundamental maxim of Human Rights, viz. 'That Law to bind all must be assented to by all.'" *Mass. Archives*, 156: 347-358.

"The complexion of the fifth article is blacker than that of any African, . . ." wrote Dr. Gordon, under date of April 2, 1778, in *Continental Journal*, no. 98, April 9, 1778.

<sup>3</sup> On one line in this connection an extreme was reached when Rehoboth, June 1, 1778, proposed a law "enabling each town in this State at any time, to elect a Representative or Representatives to represent them in the great Convention or General Court, and thereby to recall their former Representative or Representatives as the pleasure of any town may be, or to add to their present number similar to the power of this State, of sending or recalling their Delegates to or from the honorable Congress, . . ." *Continental Journal and Weekly Advertiser*, CXLI., Feb. 4, 1779.

<sup>4</sup> Cf. *Mass. Spy*, no. 377, July 23, 1778.

<sup>5</sup> "I shall attempt to convince you, that the placing the legislative and executive powers in the same hands is unconstitutional, impolitic, oppressive and absurd." "O. P. Q." in *Mass. Spy*, no. 266, May 18, 1776.

Cf.: "It is essential to Liberty that the legislative, judicial, & executive

however, the crucial point was the article on the basis of representation. The town of Boston, after denying the propriety of the action of the assembly on constituent matters and after dwelling on the lack of a bill of rights, declared, as to its third point, that "*reason, justice and common sense*, must be tortured to a great degree to accept that *representation*, as equal which may be *as ten or twenty to one*."<sup>1</sup> Boston's rejection of the document was unanimous;<sup>2</sup> and with Boston went the state. It was not, however, as "*Philadelphus*" had prophesied,<sup>3</sup> a contest over the suffrage between the property holders and others. If a single utterance may be taken as a correct description of the cause and course of action in the campaign, it was doubtless that of Samuel Cooper when he sent to Franklin a "printed copy of our proposed constitution, which," he wrote, "has been rejected in a very full meeting of this Town, and is like to be by many others for different reasons; particularly, because in the opinion of the maritime towns, Representation is too unequal,<sup>4</sup> while in the opinion of others it is too nearly equal."<sup>5</sup> The ready estimates of possible disproportion between the taxes paid by various sections and their population and representation in future legislatures developed a strong argument for one party; on the other

Powers of Government be, as nearly as possibly, independent of & separate from each other; . . . ." Instructions of Boston town-meeting, May 23, 30, 1776, to representatives. *Boston Town Records*, XVIII., 238.

<sup>1</sup> May 25, 1778. *Independent Chronicle*, no. 511, June 4, 1778. Wm. Gordon wrote that "such is the plan in the sixth article, that no power or wisdom can make it equal, that excepted which formed a beautiful world out of a chaos." *Independent Chronicle*, no. 504, April 16, 1778. Cf. *Essex Result*, 4.

<sup>2</sup> The vote was 968-0. *Independent Chronicle*, no. 511, June 4, 1778. *Boston Town Records*, XXVI., 22-24.

<sup>3</sup> *Independent Chronicle*, no. 452, April 17, 1777.

<sup>4</sup> Cf. *Debates and Proceedings of the Convention of 1853*, I., 818, 819.

<sup>5</sup> June 1, 1778. Copy in *Sparks Papers*, XVI., 252, 253.

hand the opposing party were firm in the demands of the present;<sup>1</sup> and the effect of the antagonism of interests complicated by the diversity of political theories was not merely a failure to secure the approbation of two-thirds of the voters, but a hearty and decisive rejection.<sup>2</sup>

In this whole movement Boston had been a center of strong opposition; and of its writers none had been more facile and effective than the clergyman of Roxbury, William Gordon, who had already written widely and well on the politics of the time. He now directed against the proposed constitution a series of four comparatively moderate but weighty articles,<sup>3</sup> the first of which, treating in a somewhat incisive manner the conduct of the General Court, occasioned his summary removal from the office of chaplain to that

<sup>1</sup> As to division of parties on lines of personal following about this time, see Durand, *New Materials for History of American Revolution*, 18, 19.

<sup>2</sup> "Boston, October 8. We hear that the return made to the General Court from the several towns and plantations respecting the constitution of government lately agreed upon by the convention of this State, are as follows, viz.: Yeas 2083. Nays 9972. N. B. 129 towns and plantations have made no return." *Mass. Spy*, no. 389, Oct. 15, 1778. *Works of John Adams*, IV, 214, gives 120 as the number of towns not reporting. The votes of 39 towns on the constitution as submitted are given in full in *Mass. Archives*, 160: 1-31. Considering 126 towns, only one county (Barnstable) gave a majority for the constitution; there was a unanimous vote for the constitution in 4 towns, a unanimous vote against it in 57 towns. Savage, *Constitution of Mass.*, p. 8. Of these four favorable towns, the vote of Hardwick, May 19, 1778, was 68-0. *Lincoln Papers*.

The house members of the joint committee to examine the returns were Col. Brown of Pittsfield, Col. Brown of Reading, and Capt. Brown of Watertown; they were appointed June 17, 1778. The committee, somewhat changed in the interval, made its report October 8, 1778. *Journal of House of Representatives*.

On May 31, 1778, James Warren, wrote to Samuel Adams: ". . . with regard to the Constitution I am of the Opinion it will not prevail, & that Anarchy & Confusion will take place before we have one settled . . ." *Adams Papers*, Bancroft Collection.

<sup>3</sup> These letters are in the *Independent Chronicle*, nos. 502, 503, 504, 506; April 2, 9, 16, 30, 1778.

body.<sup>1</sup> These articles contained not only a discussion of the liberal treatment by the convention of the resolve adopted by the assembly on May 5, 1777, but also an objection to the establishment by two-thirds of those now actually exercising the suffrage, of a constitution that could be altered only by two-thirds of those who by it were qualified to vote.<sup>2</sup> The proposal of a triple nomination by the governor and senate to each office which was to be filled by the house of representatives was also the object of unfavorable criticism. Further, in the main, his remarks were only one expression among many on the leading points then under discussion, such as religion, representation, and suffrage; but his prominence in press and pulpit gave a special influence to his words.

In the third letter of this series Gordon alluded to an event which can easily be conceived to have been the main cause of the general dissatisfaction with the constitution of 1778, and which, with the activity of Boston, has given to the coast districts the credit, or discredit, of the defeat of the plan it contained. "I rejoice," he wrote, "that a county Convention is likely to be held in Essex,"<sup>3</sup> and the day before this appeared in print the Essex county convention had begun its work at Ipswich. When the town of Newburyport, on March 27, took a definite stand against the newly proposed method of representation, it asked its selectmen to suggest a county convention to which each town should send as many delegates as each sent representatives to the house. Theophilus Parsons<sup>4</sup> and four associates were appointed as dele-

<sup>1</sup> Cf. *Journal of the House of Representatives*, April 4, 6, 1778.

<sup>2</sup> Gloucester, April 13, adopted report of a committee noting the inconsistency of two-thirds of the freemen establishing a constitution, and two-thirds of the inhabitants altering it. *Lincoln Papers*.

<sup>3</sup> *Independent Chronicle*, no. 504, April 16, 1778.

<sup>4</sup> As to the convention, Theophilus Parsons, Jr., wrote: "It originated in Newburyport, and I have been repeatedly told that my father began it; but I have no evidence of this." *Memoir of Theophilus Parsons*, 47.

gates from Newburyport. April 15 was fixed as the time, and Mr. Treadwell's tavern at Ipswich<sup>1</sup> as the place, of meeting. Some towns, including at first Danvers<sup>2</sup> and Beverly,<sup>3</sup> did not join in the program; but a dozen towns took some such action as that of Gloucester, when Peter Coffin and two associates were appointed to attend the convention "to advise some decent and proper methods in which all the free-men of this state may enjoy a form of Government consonant to the natural rights of mankind and the principles of a free Constitution."<sup>4</sup>

At Ipswich, at the time appointed, more than a score of delegates assembled,<sup>5</sup> but they placed themselves on record in no important action until the session of April 29, when a series of eighteen resolutions was passed summarizing the case against the constitution, and a committee was appointed to show the lack of agreement between that document and the views thus expressed, and to outline, as well, a new form of government. On May 12 the report of this committee was made and was approved by the convention. The earlier resolutions and the report of the committee were at

<sup>1</sup> A sketch of the various proceedings of the town of Ipswich in the years 1775-1780 is given in Felt, *History of Ipswich*, 132-134.

<sup>2</sup> April 13, 1778; *Lincoln Papers*.

<sup>3</sup> But both Danvers and Beverly subsequently acceded to the action of the convention; see *Mass. Archives*, 156: 192-196.

<sup>4</sup> *Lincoln Papers*.

<sup>5</sup> A list of 28 delegates, representing 12 towns (nine towns not being reported), is given in *Memoir of Theophilus Parsons*, 49, 50.

Of the proceedings of this convention only two half sheets were subsequently preserved; these were owned by Theophilus Parsons, Jr.; see his *Memoir of Theophilus Parsons*, 50. They contained the vote in opposition to Art. 34 of the Declaration of Rights, "because the free exercise and enjoyment of religious profession and worship are there said to be *allowed* to all the Protestants in this State, when in fact that free exercise and enjoyment is the natural and uncontrollable right of every member of the State." Quoted in *Ibid.*, p. 50.

once published<sup>1</sup> in a pamphlet of 68 pages, which throughout the summer served as a strong weapon for the opponents of the constitution. In this so-called "Essex Result"<sup>2</sup> were gathered all the stronger elements of the political teachings of the past; in it was expressed at its best the opposition to the constitution of 1778; and with it opened the new period which was to see the successful establishment of the constitution of 1780. This product of the convention was a striking example of the intellectual activity of the time, while even in the broader field it formed a land-mark that still stands, containing, as Judge White later wrote,<sup>3</sup> "beyond any other political document of that day, a clear exposition of the principles upon which the organic laws of a free state should be founded,—the very principles essentially adopted in forming the Constitution of Massachusetts."<sup>4</sup> Savage tersely called it "the most admirable condensation of political wisdom, that our country, or perhaps any country, in so small compass had ever produced."<sup>5</sup>

Eleven principles were by this committee adduced as those which then seemed to be established. The first was that the supreme power was limited to the control of those alienable rights surrendered by a man when he entered society; so-

<sup>1</sup> A large edition was printed. *Memoir of Theophilus Parsons*, 47.

<sup>2</sup> Newbury-Port, Printed and Sold by John Mycall. The text has been reprinted in *Memoir of Theophilus Parsons*, 359-402.

<sup>3</sup> To T. Parsons, Sept. 15, 1858; *Memoir of Theophilus Parsons*, 454, 455.

<sup>4</sup> *The Independent Chronicle*, no. 512, June 11, 1778, had an advertisement of the "Essex Result," which included: "In this excellent Performance, the Principles of a free republican Form of Government have been attempted, some Reasons in support of them mentioned the out Lines of Constitution have been delineated in Conformity to them, and the Objections to the Form of Government proposed to the People at large, for their Acceptance or Rejection, have been stated."

<sup>5</sup> Savage, *Constitution of Massachusetts*, 8. For a further characterization, see *Memoir of Theophilus Parsons*, 53.

society was "one moral whole" possessing supreme power. "This supreme power is composed of the powers of each individual collected together, and VOLUNTARILY parted with by him. No individual, in this case, parts with his unalienable rights, the supreme power therefore cannot controul them."<sup>1</sup> Their second principle was that the inalienable rights and the equivalent of those alienated must be clearly expressed before any constitution can be ratified. "Over the class of unalienable rights the supreme power hath no controul, and they ought to be clearly defined and ascertained in a BILL OF RIGHTS, previous to the ratification of any constitution. The bill of rights should also contain the equivalent every man receives, as a consideration for the rights he has surrendered."<sup>2</sup> Recognition was given the wisdom of securing the inter-balancing of the three departments of government and the independence of each. The executive was declared to be most effective if vested in one or a few; the enactment of laws, however, was improved by the concurrence of men of all classes; yet elsewhere they described the law-making body as "the whole body politic, with all its property, rights, and priviledges, reduced to a smaller scale,"<sup>3</sup> and furthermore said that "it is necessary that the law be for the good of the whole, which is to be determined by a majority of the members, and that majority should include those, who possess a major part of the property in the state."<sup>4</sup> Their series of principles included reference to the rights of the majority, and an insistence upon the necessity of equal political liberty; "political liberty," they

<sup>1</sup> *Essex Result*, 13, 14.

<sup>2</sup> *Ibid.*, 15. On page 16 it is stated: "Allegiance and protection are reciprocal."

<sup>3</sup> *Ibid.*, 29.

<sup>4</sup> *Ibid.*, 23. On page 28 it is said that a law affecting persons or property to be valid should have the consent of a majority, "which majority should include those, who hold a major part of the property in the state."

say elsewhere, "is the right every man in the state has, to do whatever is not prohibited by laws, TO WHICH HE GIVES HIS CONSENT."<sup>1</sup>

The consideration of the proposed constitution by the authors of the *Essex Result* was in such detail<sup>2</sup> that their objections were convincing.<sup>3</sup> Many specific points were treated and the committee finally were "compelled, though reluctantly, to say, that some of the principles upon which it is founded, appeared to them inconsonant, not only to the natural rights of mankind, but to the fundamental condition of the original social contract, and the principles of a free republican government."<sup>4</sup> An excellent statement of the

<sup>1</sup> *Essex Result*, 14.

<sup>2</sup> E.g. As to Article 2, objection is made to the governor's membership in the senate. As to Article 3, it is held that the property qualification of the governor is too small, and that the value of an estate is not well determined, the currency varying as it does. *Essex Result*, 41.

As to Article 10, the mode of electing the governor is said to be conducive to bribery and corruption; they aim to prove this by referring to a similar mode earlier in use in Rhode Island, where the governor retained his office by open bribery. *Essex Result*, 43, 44.

Objection is made that the quorum in each house is too small; it is held that every officer should be subject to impeachment. The articles of the document are taken up *seriatim* in the report of this committee, resulting thus in the presentation of much detail.

<sup>3</sup> E.g.: As to Article 6, the plan of representation is said to be "grossly unequal" and "flagrantly unjust;" thus 20 towns might have 40 representatives and one town of sufficient size might have 19 representatives; it would be possible for about one-twelfth of the representatives to bind the whole state; in a century the house would be a "mere mob." *Essex Result*, 42, 43.

Objection is made that the constitution "was formed by gentlemen, who, at the same time, had a large share in conducting an important war, and who were employed in carrying into execution almost all the various powers of government." *Essex Result*, 7, 8.

It is maintained that the executive checks on the legislative department are not sufficient to prevent encroachments. "Without this check the legislative power will exercise the executive, and in a series of years the government will be as absolute as that of Holland." *Essex Result*, 46.

<sup>4</sup> *Essex Result*, 41.

situation was presented,<sup>1</sup> and the foresight so characteristic of the times was indicated in the words: "We are not attempting to form a temporary constitution, one adjusted only to our present circumstances."<sup>2</sup>

<sup>1</sup> *E.g.*: "Perhaps their situation is more favorable in some respects, for erecting a free government, than any other people were ever favored with. That attachment to old forms, which usually embarrasses, has not place amongst them. They have the history and experience of all States before them." *Essex Result*, 11. Cf. *Ibid.*, 10. They further say: "The voice of the people is said to be the voice of God. No man will be so hardy and presumptuous, as to affirm the truth of that important proposition in it's fullest extent." *Essex Result*, 17.

<sup>2</sup> *Essex Result*, 19. Contemporary mention of this pamphlet is seen in the report, of 23 pages, of the action of the town of Northampton, May 22, 1780, on the constitution. As to woman's suffrage, they "refer to what is very sensibly, as well as genteelly said on the subject, in the twenty-ninth page of the Essex result." *Mass. Archives*. Reference was made to page 9 of the "Result," "as to the case of women, of whatever age, or condition, . . . ." A draft of the report is in *Hawley Papers*, II., Bancroft Collection.

Richard Frothingham, Jr., said in 1853: "I know of no early document which is so remarkable in its character as is that report—known as the *Essex Result*." *Debates and Proceedings of the Convention of 1853*, I., 606.

## CHAPTER VIII

### THE CONSTITUTION OF 1780

#### § 1. *Preliminary Action*

THE rejection of the constitution of 1778 and the consequent doubt of the General Court thereafter as to "what are the sentiments of the major part of the good People of this State, as to the expediency of now proceeding to form a new Constitution of Government,"<sup>1</sup> prompted the house<sup>2</sup> to resolve, on February 19, 1779,<sup>3</sup> that all who were qualified to vote for representatives should be called to vote on or before the last Wednesday of May 1779,<sup>4</sup> and that on two points: first,

<sup>1</sup> *Journal of the Convention, . . . 1779, . . . 1780. . . .* Boston, 1832, p. 189.

<sup>2</sup> The legislative preliminaries of this step are in *Journal of the House of Representatives*, Jan. 6—May 3, 1779, 72, 129, 145, 147. Cf. *Ibid.*, 159.

<sup>3</sup> Already several town committees had met at Capt. Israel Hubbard's "to Consult on Some proper method of Setting forward, and procureing a Constitution of Civil Goverment for y<sup>e</sup> State of Massachusetts Bay." Writing from Sunderland, Dec. 16, 1778, they asked the Northampton committee to fix a time and place for a county convention, "and in so doing we trust you will do a signal publick service." They were unanimously "of y<sup>e</sup> opinion y<sup>t</sup> y<sup>e</sup> present mode of civil Goverment in this County, & State (all circumstances considerd) in many instances not for y<sup>e</sup> peace and safety of this state." "N. B. We write this to you Gentlemen—because we understand you are supposed by y<sup>e</sup> County to stand in y<sup>t</sup> publick place—y<sup>t</sup> any Town or towns desireing a County Convention may write to you—if not we earnestly desire you would do it." *Hawley Papers*, II., Bancroft Collection.

At Chesterfield, March 30, 1779, some town committees of Western Hampshire county issued a call for a county convention to be held at Northampton April 20, and asked the county to "Bear Testimony against a Constitution without a Name & Legislation without Law." *Hawley Papers*, II., Bancroft Collection.

<sup>4</sup> *Journal of the Convention*, 189, 190. On the first Wednesday in May, according to the *Boston Gazette*, no. 1285, April 12, 1779.

whether they desired that a new constitution should then be made; and, second, whether, if the vote on the first point should be found to have resulted affirmatively, they would empower their representatives to call a convention for the sole purpose of forming such a constitution.<sup>1</sup> The council on the succeeding day concurred,<sup>2</sup> and the first Wednesday in June was appointed as the day before which the boards of selectmen should have reported to the secretary of the commonwealth. The returns<sup>3</sup> then submitted showed a favorable response to both propositions, and accordingly, on June 17, the General Court resolved,<sup>4</sup> as two-thirds of the towns<sup>5</sup> had returned a majority favorable to the resolve of February 20, to recommend a convention, which should be of the same size as the General Court, and which should meet at Cambridge on September 1 and begin the work of forming a new constitution. It was further resolved that the selectmen of the towns should call town-meetings, to be held at least fourteen days before September 1, for the election of convention delegates by "every Freeman, Inhabitant of such town, who is twenty one years of age," and further that the next house of representatives be instructed to establish the constitution when ratified by two-thirds of the free male inhabitants, who

<sup>1</sup> *Journal of the Convention*, . . . 189, 190.

<sup>2</sup> The resolution is in the *Boston Gazette*, no. 1285, April 12, 1779.

<sup>3</sup> Many returns were made on the single sheets on which had been printed the Resolve of Feb. 20. Some original returns are in *Mass. Archives*, 160: 32 *et seq.*

<sup>4</sup> House bill of June 15. *Journal of the Convention*, 5, 6.

<sup>5</sup> In connection with the units of voting, attention should be called to the Resolve of April 29, 1779, granting to unincorporated plantations paying taxes the privilege of joining in the election of representatives with the towns in which they were taxed. *Mass. Archives*, 213: 409.

As to the system of representation, the town of Petersham, on May 22, asked the General Court to repeal the late Act of Representation, as favorable to the trading class and harmful to the interests of manufacturers and real estate. *Mass. Archives*, 185: 167, 168. Cf. *Boston Town Records*, XXVI., (3).

were twenty-one years old, and were acting in town-meetings called for the purpose.

The response to this action of the General Court was in most cases a simple return<sup>1</sup> of delegates; but several, including Boston, further insisted, among other things, upon a strict observance of the legislative resolve providing for the submission of printed copies of the constitution for local action, and a few towns took the opportunity to instruct their delegates upon various matters of equally varied importance.<sup>2</sup> Some towns endeavored to establish a reputation for political intelligence. Stoughton, thus, treated the problem of a biennial council of censors, dwelt at length on the matter of a bill of rights, on the source of power, on the triple division of government; and proposed a series of county conventions, a meeting of conference committees sent by these, and finally a full convention "to frame out of y<sup>e</sup> above materials y<sup>e</sup> best Constitution of Government in y<sup>e</sup> World."<sup>3</sup> Sandisfield offered an abundance of detail<sup>4</sup> including the expression of a demand then strong and to be stronger, that there should be a registry of deeds in every town and more generally convenient probate facilities. The town of Gorham would excel Franklin on his own ground, and proposed not only a legislature of a single chamber but

<sup>1</sup> These returns and the returns to the Resolve of February 20 are in *Mass. Archives*, 160: 32-293.

<sup>2</sup> E. g.: Lunenburg, August 9, 1779. *Mass. Archives*, 160: 187. Dudley, August 18, 1778. *Mass. Archives*, 160: 183. Williamstown, July 27, 1779. *Mass. Archives*, 160: 139. The last town included in its suggestions a proposal for the repeated submission of the constitution until two-thirds should have approved.

<sup>3</sup> *Mass. Archives*, 160: 266-277.

<sup>4</sup> *Ibid.*, 160: 255-265. The report included the suggestions of two sessions of the Assembly, in May and October, of an annual term for Representatives, although with elections in April and September, and of liberty of conscience to all protestants. It also proposed the title of "His Honour" for the Lieutenant-Governor.

also the abolition of governor and council, citing for their comfort the happiness of the Romans under their Senate and of the Jews under their Sanhedrim. In this manner and in the press<sup>1</sup> the sentiment of the time was voiced plainly and with sufficient fulness, so that when September came the

<sup>1</sup> Thus the *Boston Gazette*, nos. 1298-1300, July 12, 19, 26, 1779, has "An Address to the Good People of the State of Massachusetts Bay," with a Bill of Rights and Form of Government, "Calculated, formed and collected, by one of the Members of the honorable House of Representatives of Massachusetts State, 1778." The address includes: "Let us have a Constitution, not upon party views or prejudice, nor to aggrandize those that may rule among us, with pomp, honor, and wealth; but a Constitution founded in the honor, interest, safety and happiness of this State in general," no. 1298. He favors a bicameral legislature, annual elections, liberty of conscience to protestants, entails, and graded property qualifications for electors. The Pres., vice-Pres., Council, Representatives, Continental Congress delegates, and all judicial officers were in his plan to be Protestants. "Trade, commerce, land, personal estate, polls, and faculty, bearing a proportion in the public expenses yearly, to be stated by the House of Representatives; and a Valuation list shall be taken once in three years to that end for ever hereafter," no. 1299.

So "A Freeholder" in the *Boston Gazette*, no 1306, Sept. 6, 1779, writes: "Self-love is the main spring of human actions." He proposes simplicity in the Constitution, a Bill of Rights with a clear definition of powers and with elections so frequent that "the people shall hold the staff in their own hands." [Cf. "Some thoughts on Government:" "And as the principles of government mainly consist in settling where the power shall rest, and how it shall be exercised, and as the law of God and nature hath put the power in the hands of the people so it is of great importance that they keep it there." *Mass. Spy*, no. 364, April 23, 1778.] He suggests rotation in office, freedom of conscience to all Christians, the abolition of compulsory payments for religion, and the freedom of civil liberty from the limitations of religious acts. "Every man who objects to an article so full and plain as this is, gives, in my opinion, the public reason to suspect that he is not in heart a friend to the rights of conscience."

On the general situation, "a friend to the community," while urging a new constitution, had written in May: "The people of this State were once universally disposed to obedience of law; no people more reverenced the laws of the land; and in ancient times placed greater confidence in their rulers. The late revolution has brought us in a relax state of government; that old reverence for law is almost worn out of the minds of the people, and will in a very short time be eradicated, unless a new form of government be assumed, . . . ." *Independent Chronicle*, no. 563, May 20, 1779.

Cf. Stevens, *Facsimiles*, no. 2046.

delegates were adequately instructed, by means both formal and informal, for the work before them.<sup>1</sup>

## §2. *Work of the Convention*

On the day appointed by law the delegates<sup>2</sup> who were invested with constituent powers<sup>3</sup> convened at Cambridge.<sup>4</sup> An organization was promptly effected,<sup>5</sup> credentials were produced and passed upon, a committee on rules was created,<sup>6</sup> and six monitors were appointed "to keep order, and to return the House as there may be occasion."<sup>7</sup> The second day of the session it was resolved, "That it is the opinion of this Convention, that they have sufficient authority from the People of the Massachusetts Bay to proceed to the framing a new Constitution of Government, to be laid before them agreeably to their instructions."<sup>8</sup> On the day thereafter the delegates began their work. On the basis of a committee

<sup>1</sup> And cf. Joseph Hawley, October 18, 1779, to Samuel Adams: "Your Power is not derived from The Gen'l Assembly But the *People*." *Adams Papers*, VI., Bancroft Collection.

<sup>2</sup> *The Boston Gazette*, no. 1306, Sept. 6, 1779, contains an incomplete list of delegates. Cf. *Works of John Adams*, IX., 618. An incomplete list of 293 delegates is given in *Journal of the Convention*, 8-19. E. g.: the town of Western sent a delegate with no formal warrant, simply "hearing of the precept," and holding election. *Mass. Archives*, 160: 289. Cf. Smith, *History of Pittsfield*, I., 369.

<sup>3</sup> The question of the nature and legality of this body, and the question of its authority, were discussed in 1853 by Benjamin F. Butler, who aimed to show that the convention of 1779-80 was in such respects perfectly similar to those of 1820 and 1853. *Debates and Proceedings of the Convention of 1853*, 94-97. Cf. *Ibid.*, 78, 115.

<sup>4</sup> Cf. *Debates and Proceedings of the Convention of 1853*, I., 13.

<sup>5</sup> James Bowdoin was chosen President, and Samuel Barrett, Secretary. *Journal of the Convention*, 7.

<sup>6</sup> Consisting of Messrs. Pickering, Gorham, Goodman, Sullivan, and Dawes. Their report, as amended, comprised ten rules of procedure, and was accepted Sept. 2. *Journal of the Convention*, 20, 21.

<sup>7</sup> *Ibid.*, 19.

<sup>8</sup> *Ibid.*, 22.

report they determined upon the choice of a committee of thirty-one, four at large and twenty-seven named by the county delegations,<sup>1</sup> for the preparation of a declaration of rights and a constitution. This committee<sup>2</sup> was constituted on September 4, when also the "Convention resumed a free conversation, begun yesterday, on the general principles of a Declaration of Rights, and a Form or Constitution of Government."<sup>3</sup> Those whom Winthrop has called the "greatest minds of the Commonwealth,"<sup>4</sup> were now beginning "to repair the failure"<sup>4</sup> of 1778; and surely never before was there a happier opportunity for a man "to display his knowledge of the principles of government, and of men and things. Numbers of members did honour to themselves and their country, on that occasion; and," further wrote the "Laco" of the time, "our present happy Constitution, the wonder of the world,

<sup>1</sup> Five counties had three members each on this committee; four counties, two each; three counties, one each; Dukes and Nantucket Counties together had one member. *Journal of the Convention*, 24. As neither Dukes nor Nantucket was represented in the Convention, neither had a member on this committee, as actually constituted.

In the Harvard College Library [6347.12] is a copy of the report of the committee on the Constitution, in which volume is bound a letter of Samuel Barrett, Secretary of the Convention, to Rev. Edwd. Wigglesworth, dated Nov. 5, 1779, giving an "Exact List" of the large committee, and naming Bowdoin, John Adams, and Samuel Adams as the sub-committee. But he gives Samuel Small as of Lincoln Co., and Benj. Brainard as of Cumberland Co., which was the reverse of the minutes (*cf. Journal of the Convention*, 29), and the reverse of their residences. As to Dukes and Nantucket, Barrett says: "from their peculiar Situation in respect of the Enemy, not being represented in the Convention, had no Member on the committee."

In the choice of committeemen at large, with 237 voting and 119 votes needed to elect, Samuel Adams received 209, Caleb Strong 203, and John Pickering 156. In the afternoon, with 198 voting, William Cushing received 135 votes and was added to the committee. *Journal of the Convention*, . . . 30.

*Cf.* Theophilus Parsons, *Memoir of Theophilus Parsons*, 55, 56, 454.

<sup>2</sup> The thirty members are given in *Journal of the Convention*, 28-30.

<sup>3</sup> *Ibid.*, 27.

<sup>4</sup> R. C. Winthrop, *Life and Services of Jas. Bowdoin*, Boston, 1876, p. 21.

exhibits the clearest proof of wisdom and knowledge."<sup>1</sup> A Massachusetts man, already quoted, spoke of this body as containing "as great a number of men of learning, talent and patriotism as had ever been convened here at any earlier period;"<sup>2</sup> but the Adams whom Paul Wentworth had mentioned as the "Legislator much Confided in,"<sup>3</sup> later referred to the convention as a body containing "such chaos of absurd sentiments concerning government" that he "was obliged daily, before that great assembly, and afterwards in the Grand Committee, to propose plans, and advocate doctrines, which were extremely unpopular with the greater number."<sup>4</sup> The one who recognized in patience the three virtues of the politicians<sup>5</sup> had written more than four years before, on the receipt by the Continental Congress of the letter<sup>6</sup> of the Massachusetts Provincial Congress relative to forms of government: "This subject had engaged much of my attention before I left Massachusetts, and had been frequently the subject of conversation between me and many of my friends,—Dr. Winthrop, Dr. Cooper, Colonel Otis, the two Warrens, Major Hawley, and others, besides my colleagues in Congress,—and lay with great weight upon my mind, as the most difficult and dangerous business that we

<sup>1</sup> *The Writings of Laco* [Stephen Higginson], Boston, 1789, 13.

<sup>2</sup> R. C. Winthrop, quoted in Bullock, *Centennial of the Massachusetts Constitution*, Worcester, 1881, 16.

<sup>3</sup> Minutes on Parties in America; Stevens, *Facsimiles*, no. 487.

<sup>4</sup> John Adams to Benj. Rush, Quincy, April 12, 1809. *Works of John Adams*, IX., 618. Illustrating his position, he further wrote: "Lieutenant-Governor Cushing was avowedly for a single assembly, like Pennsylvania. Samuel Adams was of the same mind. Mr. Hancock kept aloof, in order to be governor. In short, I had at first no support but from the Essex junto. . . ." A different view appears in *Wells Papers, S. Adams and the American Revolution*, III., ch. 11, Bancroft Collection.

<sup>5</sup> Cf. *Works of John Adams*, IX., 394.

<sup>6</sup> Dated May 16, 1775.

had to do; (for from the beginning, I always expected we should have more difficulty and danger, in our attempt to govern ourselves, and in our negotiations and connections with foreign powers, than from all the fleets and armies of Great Britain)."<sup>1</sup> The patience, the ability, and the influence of Adams were now to show their effect; with his name is the important report of October 28 most closely associated.<sup>2</sup>

The constitutional convention after completing its preliminary business, passing certain general resolutions,<sup>3</sup> and taking steps toward securing a larger attendance,<sup>4</sup> asked the committee on the constitution to fix soon the time and place of its meeting,<sup>5</sup> and then adjourned to meet October 28. During the recess<sup>6</sup> of the convention the committee of

<sup>1</sup> Autobiography under date of June 2, 1775, *Works of John Adams*, III., 13.

<sup>2</sup> Cf. *Ibid.*, IV., 213-267.

<sup>3</sup> On September 3, "Resolved, unanimously, That the Government, to be framed by this Convention, shall be a free Republic." "Resolved, That it is of the Essence of a free Republic, that the People be governed by FIXED LAWS OF THEIR OWN MAKING." *Journal of the Convention*, 24.

<sup>4</sup> The Convention, on Sept. 4, asked the General Court to adjourn the Superior Courts of Worcester and Hampshire Cos., to avoid conflicts in the appointments of members. *Journal of the Convention*, 31. The Council, on Sept. 9, resolved, and the House concurred the same day, to adjourn from the appointed dates the Superior Courts of Worcester, Hampshire, Middlesex, Essex, and Suffolk Counties, as some justices were on the committee on the constitution. The original resolve, sent down from the council, is in *Mass. Archives*, 223: 432-434. The bill was published in the *Boston Gazette*, nos. 1307, 1308, 1309, Sept. 13, 20, 27, 1779. Cf. *Journal of the House of Representatives*.

To secure a more complete representation in the Convention when it should reassemble on October 28, a recommendation to the selectmen of all towns was adopted on Sept. 7, that they should have delegates chosen, if it had not already been done.

<sup>5</sup> The appointment was made for Sept. 13 at the New Court House.

<sup>6</sup> That part of the recess between Sept. 7 and Oct. 1, is covered by an extant roll of attendance of Secretary Barrett and the 30 members. In this pay roll 24 days' time is given to Rev. Sam'l West, Jas. Harris, and Caleb Strong; 23 days' time to two members; and "no service" is entered against 11 out of the 30, viz., Jas.

thirty<sup>1</sup> delegated the actual constructive work of a bill of rights to John Adams,<sup>2</sup> and of a constitution to James Bowdoin, Samuel Adams,<sup>3</sup> and John Adams, a frame by the last of whom was, after modification by the two committees, reported to the convention with the bill of rights.<sup>4</sup>

Bowdoin, John Lovell, Jas. Sullivan, Nath'l Gorham, Jed. Foster, John Cotton, David Sewall, Enoch Hallett, Sam'l Small, Benj. Brainard, and Wm. Cushing. *Mass. Archives*, 170: 413. Since reading the manuscript of the foregoing I have found in the *Annals of Mendon*, 385, 386, a similar roll, taken from the original cited.

On October 25, 1779, Caleb Strong wrote to Joseph Hawley: "I was so fortunate as to arrive here just before the Committee entered on Business since which we have applied with Industry & I believe we shall find our Time quite short enough." *Hawley Papers*, II., Bancroft Collection.

<sup>1</sup> On p. 36 of a copy in the Lenox Library of *Journal of the Convention*, . . . Boston, 1832, is written, evidently by Geo. Bancroft: "The committee of 30 for framing the constitution met in Boston & chose a sub-committee composed of J. Adams, Bowdoin, & S. Adams. What is the authority for this statement?" See p. 232, note 1.

<sup>2</sup> Article 3 of the Bill of Rights was not attributed to John Adams. Cf. *Works of John Adams*, IV., 215, 216.

<sup>3</sup> W. V. Wells quotes a letter to himself from Caleb Strong, Northampton, May 31, 1819: "Mr. Adams was very assiduous in attending to the business, & according to the representation which you mention as given by doctor Eliot was eminently useful from his knowledge and experience. Besides gov. [Samuel] Adams there were in the committee gov. Bowdoin the chairman, Mr. Adams, late President of the United States, the late Chief Justice Will<sup>m</sup> Cushing, Judge Paine, Mr. John Pickering of Salem, the late Chief Justice Parsons, and several other of the most able men in the State. These generally agreed in the principles of the Constitution; but they were often opposed by divers members of the committee who wished for what was termed a more popular government." Wells also states that Judge Robbins, of Milton, a member of the convention, informed him that Samuel Adams made many animated speeches of two hours in length. *Wells Papers, Samuel Adams and the American Revolution*, III., chap. 11, Bancroft Collection.

<sup>4</sup> This report was not easily to be found in 1832. Cf. *Works of John Adams*, IV., 216. Cf. *Journal of the Convention*, 191.

*The Report of a Constitution . . .* a pamphlet of 50 pages was published in 1779 by Benj. Edes and Sons, Boston. Copies are in the Library of Harvard

With a tentative frame of government before it as a basis of discussion the convention, on October 28, resumed its work.<sup>1</sup> The first active session of the convention, which lasted a fortnight, resulted in the prompt acceptance of seventeen articles in the bill of rights, and in the adoption, after discussion and alteration,<sup>2</sup> of ten others, including the troublesome third article. Final action on the remaining articles was postponed, and an effort was made to consider the body of the constitution. Besides the matter of judicial tenures, the only important point which in these weeks, as indeed also later, was the subject of much controversy was the article bearing on matters of religion, the third article of the bill of rights. Of this the first two propositions were accepted on October 30; those concerning the support of religious instruction and worship were "largely debated" and their final consideration postponed. Attention was given to the matter on the three succeeding days, on the last of which it was referred, together with all related propositions, to a special committee of seven;<sup>3</sup> by them, three days later, was

College. In the *Mass. Archives* is a copy on large paper with notes in the margin by Stephen Hall, Tertius, of Medford.

The text of the report has been printed in *Journal of the Convention*, pp. 191 *et seq.*

As to the authorship of this report, *cf. Memoirs of Theophilus Parsons*, 55, 56, 454.

Also, *e. g.*, John Adams to Mercy Warren, July 28, 1807: "I made the Constitution for Massachusetts which finally made the Constitution of the United States." 5 *Collections Mass. Hist. Society*, IV., 377. *Cf. Debates and Proceedings of the Convention of 1853*, I., 820.

*Cf.* John Adams, August 8, 1807, to Mrs. Mercy Warren. 5 *Collections of the Mass. Historical Society*, IV., 432.

<sup>1</sup> On Oct. 28, 19 new members qualified. *Journal of the Convention*, 34, 35.

<sup>2</sup> The alterations made by the Convention in the report of the committee were put on a printed copy of that report. Only the final form of such changes appears in the records. *Cf. Journal of the Convention*, 36.

<sup>3</sup> Rev. Alden, Th. Parsons, S. Adams, Danielson, Paine, Rev. Sanford, and C. Strong. *Journal of the Convention*, 40. Further amendments were referred to

reported a new draft of the whole of article 3. And on November 10 the convention formally adopted the report of the special committee, after having made slight changes therein and after having defeated a motion to expunge the whole article.<sup>1</sup>

Turning to the frame of government, a motion was entertained to expunge the first paragraph of the first section and to insert: "The department of legislation shall be formed by three branches, a Governor, Senate and House of Representatives, each of which shall have a negative on the other."<sup>2</sup> The convention, however, declined at this time to commit itself to such a plan, although it determined to consider first those parts of the "frame" pertaining to the legislature. But already the convention had so dwindled that at times less than one-third of the members were present.<sup>3</sup> The urgency of the situation, the expediency of enabling the public thoroughly to understand the proposed constitution, and the advisability of suspending proceedings until the cessation, in January, of the work of the General Assembly and of the superior courts, combined to bring

them on November 5, *Journal of the Convention*, 41, 42. Mr. Sanford alone of the committee disagreed with its report. *Wells Papers, S. Adams and the American Revolution*, III., ch. 11, Bancroft Collection.

<sup>1</sup> Of this, Joseph Hawley wrote that it was bad and obscure, and that future laws on religion, "if made conformable to the article itself, will afford plenty of that glorious uncertainty, which is the source of the emoluments of the men of my profession." June 5, 1780. *Hawley Papers*, II., Bancroft Collection.

<sup>2</sup> November 9; *Journal of the Convention*, 44. Cf. Diary of Ezra Stiles, April 29, 1776, after a conversation with Francis Dana: "Mr. Gadsden is sent home to assist in settling Govt. Mr. Hooper a delegate from North Carolina sent home to assist in modelling the Govt there and took a plan from Mr. Samuel Adams, vizt: three branches of legislature all elective—the deputies by the Counties—the Council and the Governor by the people at large." *Stiles Papers*, 519, Bancroft Collection.

<sup>3</sup> E. g.: November 8, a. m.; 93 present, 207 absent. *Journal of the Convention*, 42.

about an adjournment on November 11.<sup>1</sup> It was voted that the next meeting should be at Boston on the first Wednesday in January, 1780; and the president<sup>2</sup> was directed to make use of the press and publicly "to enjoin upon its members, *from its necessity and importance*, A CONSTANT AND GENERAL ATTENDANCE accordingly."<sup>3</sup>

The convention began its next session on the day appointed, but as travelling was "excessive bad," few members appeared, and during a period of more than three weeks which followed there were repeated adjournments<sup>4</sup> and efforts to secure a larger attendance.<sup>5</sup> The outlook finally improving after this "spell" of weather,<sup>6</sup> a return of

<sup>1</sup>This session had, on Nov. 9, defeated a motion to put "Oceana" in place of "Massachusetts," in the first paragraph of the preamble of the Constitution. *Journal of the Convention*, 43. Cf. Dwight, Harrington, in *Political Science Quarterly*, II., 1. Caleb Strong, Boston, October 25, 1779, to Joseph Hawley: "I had forgot to mention that some of the Comtee are dissatisfied so much with the Name of Massachusetts Bay that they would gladly substitute in its Place *Oceana* but I think we must compound the Matter with establishing Massachusetts leaving out the Word Bay." *Hawley Papers*, II., Bancroft Collection.

<sup>2</sup>The call issued on Nov. 20 by Pres. Bowdoin for a full attendance on Jan. 5, 1780, is in the *Boston Gazette*, no. 1318, Nov. 29, 1779, and the *Mass. Spy*, no. 450, Dec. 16, 1779.

<sup>3</sup>*Journal of the Convention*, p. 49.

<sup>4</sup>January 13, 1780, [S. Adams to J. Adams]: "You will see by the inclosed Paper that our convention is adjourned. The Roads thro' the Country are so blocked up by incessant & heavy Snows, that it has been impracticable for the Members to attend. It is proposed to keep it alive by Short Adjournments till a sufficient Number shall arrive to proceed to Business. Those among us who can rember [sic] the year 1727 say there has not been so much Snow on the Ground since that Time." *Adams Papers*, Bancroft Collection.

<sup>5</sup>Thus, on January 7, notices were sent to the newspapers, including even those of Providence, Worcester, Salem, and Hartford. *Journal of the Convention*, 52. It was at this period, on January 5, 1780, that the Braintree selectmen were notified to hold an election to fill the seat of John Adams "who has sailed for Europe; . . . ." *Ibid.*, 51. Cf. *Debates and Proceedings of the Convention of 1853*, I., 46, 78, 82, 91, 98, 114. Cf. *Journal of the Convention of 1820*, 54.

<sup>6</sup>"For twenty years past the traveling has not been known to be worse than at present." *Mass. Spy*, no. 453 (half sheet), January 6, 1780. Cf. *Ibid.*, no. 457,

the towns was taken on January 17, by which it appeared that forty-seven towns<sup>1</sup> were represented. It was then determined, by a vote of 42 out of a total of 60, to proceed again to business. A beginning was made by the devout refusal to strike out the committee's characterization of their ancestors as "wise and pious,"<sup>2</sup> by the adoption of chapter VII. as reported,<sup>3</sup> and by the acceptance of a detailed program of business.<sup>4</sup> Thenceforward the work was carried on with more system and better effect, although rapid progress was still hindered by the postponement of vital points in the hope of an attendance more truly representative of all parts of the commonwealth.

The work of Adams, though he was absent, was early endorsed by the final adoption of the bicameral legislative system;<sup>5</sup> a long list of offices the incumbents of which should

February 3, 1780, and *Boston Gazette*, no. 1324, January 10, 1780. On February 23, 1780, the issue of the *Mass. Spy* was omitted, owing to the small sales and the increased expenses due to bad roads. Many accounts refer to the unusual severity of the winter.

<sup>1</sup> Seven counties were not represented. At this time there were represented fourteen towns of Middlesex, ten of Suffolk, nine of Essex, five of Hampshire, four each of Worcester and Bristol, and one of Berkshire County. *Journal of the Convention*, 55-57.

<sup>2</sup> Chap. VI., Sec. 1, Art. 1.

<sup>3</sup> Chap. VII., as reported, became simply Chap. VI., Art. 9, of the constitution as adopted, providing that all officers previously commissioned should hold office until their successors should be appointed, and that all officers should continue to act until the General Court and the new officials under the constitution assumed power. January 27, 1780, *Journal of the Convention*, 58.

<sup>4</sup> January 28, 1780; *Ibid.*, 59, 60.

<sup>5</sup> February 1, 1780; Chap. II., Sec. 1, Art. I., parag. 1; the final form was taken as a substitute for the committee report. *Ibid.*, 68. But a later change was made, as the texts of the October, 1779, report, and of the adopted constitution, are in this paragraph identical. W. V. Wells quotes a letter to himself from Caleb Strong, Northampton, May 31, 1819, and cites a letter of S. Adams to J. Adams, Nov. 20, 1790, to support his claim that Samuel Adams was not opposed to a bicameral legislature. *Wells Papers, Samuel Adams and the American Revolution*, vol. III., chap. 11, Bancroft Collection.

be disqualified for legislative service was approved;<sup>1</sup> the characteristic spirit of the time and region was exemplified by the imposition upon practically all office-holders of a stringent test of allegiance in the oath of office;<sup>2</sup> and a mass of detail was passed under view. With eighty-four present,<sup>3</sup> a motion to adjourn to a distant day was defeated; and with fifty-eight present<sup>4</sup> only thirty-three<sup>5</sup> helped to answer affirmatively the question, "whether the Convention will now proceed in the business of framing a Constitution of Government, and continue in the same until completed; . . . ."

The committee's outline of work, somewhat modified from time to time, was resumed,<sup>6</sup> and the routine of report, reference, and adoption was pushed forward toward a completion of the task. The clerical spirit of 1778 failed in its efforts for the substitution of "Protestant" for "Christian";<sup>7</sup> further attention was given to the oaths of office;<sup>8</sup> and the matter of representation was given thorough consideration. Action was

<sup>1</sup> Cf. *Journal of the Convention*, 81-83, 93, 138, 139.

<sup>2</sup> Cf. *Ibid.*, 88, 89.

<sup>3</sup> From 62 towns; February 4, 1780. *Ibid.*, 80.

<sup>4</sup> February 9, 1780; *Ibid.*, 94.

<sup>5</sup> Joseph Hawley, in his Criticism on the Constitution of Massachusetts, June 5, 1780, refers to the past winter "when More than two thirds of your Body Not by any laches or default of their own but Merely by the Act of God were prevented attending y<sup>e</sup> Convention . . . . I say I do not see with what Justice such a part could be denominated the Convention. . . . The full Convention which they adjourned last fall from Cambridge to Boston had Never dismissed or passed upon any More of the Report of their Comtee than the Articles containd in the Declaration of Rights, . . . . they cannot by any reasonable construction be denominated or taken to have been the Convention unless by great liberality . . . . they should be considered such Merely for the purpose of adjourning to prevent a dissolution, . . . ." *Hawley Papers*, II., Bancroft Collection.

<sup>6</sup> February 10, 1780; *Ibid.*, 94.

<sup>7</sup> February 10, 1780. *Journal of the Convention*, 97. On February 22 a motion to insert "Protestant" immediately after "Christian" in chap. 3, art. 8, sec. 3, was defeated; there was an affirmative vote of 26 out of 60. *Ibid.*, 132.

<sup>8</sup> Cf. *Ibid.*, 109-111.

taken relative to a future alteration of the constitution;<sup>1</sup> and provision was made for the necessary processes contingent upon the popular ratification of the forthcoming document.<sup>2</sup>

An edition of 1800 copies of the constitution<sup>3</sup> was ordered,<sup>4</sup> and arrangements were made for their speedy distribution<sup>5</sup> to the proper town officials. After an appearance of

<sup>1</sup> It was not until February 23, 1780, that a committee was appointed to consider the expediency of inserting a clause "making provision for the future revision of the same by the People of this Commonwealth." Dr. Jarvis, Mr. Adams, and Mr. Spooner composed the committee. *Journal of the Convention*, 134, 135. Their report was made March 1, recommending that another convention be held after the lapse of twenty years. It was at once considered; a motion to fix the year 1800 as the year when there should be an opportunity for revision was defeated; and a motion was carried to designate for that purpose the year 1795. *Ibid.*, 156, 157. On March 2 a motion to substitute 1790 for 1795 was defeated. *Ibid.*, 162. On the afternoon of the same day the report was again considered and accepted. *Ibid.*, 162.

<sup>2</sup> The document was to be submitted to the inhabitants of each town and plantation; in case two-thirds of the voters should approve, it was recommended that the people of the towns and plantations "empower their Delegates, at the next Session of this Convention, to agree upon a time when this Form of Government shall take place, without returning the same again to the people: . . ." *Journal of the Convention*, 169.

<sup>3</sup> In the Library of Harvard College is a copy of the Constitution of 1780, as agreed on by the Convention, published by Benj. Edes and Sons, pp. 43, but with the additional line on the title page: "[Revised and Corrected.]"—In the Library of Harvard College is also a copy of the Constitution of 1780, with the convention resolutions of March 2, 1780, published by Benj. Edes and Sons, pp. 53. The text of the constitution is reprinted in *Journal of the Convention*, 222–249.

<sup>4</sup> A report including this was accepted, February 29. *Journal of the Convention*, 155. A similar vote was passed, March 1, *Ibid.*, 158.

<sup>5</sup> Messrs. Barrett, Wendell, and Gray were on March 1 appointed "to employ three expresses," and "to distribute the books to the several towns and plantations, in such numbers to each as they may think proper." Messrs. Bowdoin and Adams were immediately added to this committee. *Journal of the Convention*, 158. In *Mass. Archives*, 231: 456<sup>a</sup> is a bill of Thos. Edes against the convention, paid May 3, 1780, for a horse, 170 miles, £255; expenses, £252; fourteen days service distributing constitution in Worcester, Hampshire, and Berkshire counties, £168; total, £675. In *Mass. Archives*, 231: 456<sup>c</sup> are two bills, one of which, of L. G. Wallis, is for nine days service at "40 Dollars p

considerable friction,<sup>1</sup> it was determined that the adjournment should be until the first Wednesday in June; and an address<sup>2</sup> was agreed upon for submission to the people with the constitution.

In the address emphasis was put upon the need of concession,<sup>3</sup> and upon the difficulty of the task, while the authors frankly continued, "We may not expect to agree in a perfect System of Government: This is not the Lot of Mankind."<sup>4</sup> The address appeared thus as an apology, and furthermore as an argument and as an appeal. So it was asked whether it would not "be prudent for Individuals to cast out of the Scale smaller considerations, and fall in with an evident Majority, unless in Matters in which their Consciences shall constrain them to determine otherwise." Government, and a strong government, was essential, for it was "probable, that for the want of Energy, it would speedily lose even the Day." On April 7 the house and council voted £900 in response to the memorial of Secretary Barrett, to distribute the "doings of the Convention" to the several towns. *Mass. Archives*, 227: 74.

<sup>1</sup> Motions to adjourn to the first Wednesday in September, the second Wednesday in August, the second Wednesday in July, and the fourth Wednesday in June, were successively defeated. *Journal of the Convention*, 152, 163.

<sup>2</sup> On March 1 the motion was carried "that the same number of copies of the Address be printed, as of the Form of Government, and accompany the same, and be signed by the President." *Journal of the Convention*, 159. The Address and Constitution were printed in Almon's *Remembrancer*, 1780, II., 198-222. The Address was published by White and Adams, Boston, 1780, pp. 18; a copy is in the *Mass. Archives*, and also in the Library of Harvard College. The text is reprinted in *Journal of the Convention*, 216-221.

The committee on the address was appointed, February 22, and consisted of Messrs. Sullivan, Adams, Lowell, West, and Gray. *Journal of the Convention*, 130. As to the authorship of the address, cf. T. C. Amory, *New England Historic Genealogical Society. Proceedings commemorative of the organization of the government of Massachusetts*, 25. Wells, *Life of Samuel Adams*, III., 80-97. *Journal of the Convention of 1820*, 435.

<sup>3</sup> Also, cf. *A Sermon preached . . . October 25, 1780. By Samuel Cooper*, 28.

<sup>4</sup> *Journal of the Convention*, p. 217; this was quoted in an apologetic manner in the Address of the Convention of 1853. *The Constitutional Propositions*, p. 44.

Appearance of Government, and sink into Anarchy." But to avoid tyranny a duly proportioned weight should be given to each power of government, and to "do this accurately requires the highest Skill in political Architecture." To convince the people of the wisdom of their work suggestive explanations were offered upon the more salient points. In the endeavor "to assist your Judgments" they flattered themselves that they had "sufficiently guarded the rights of Conscience from every possible infringement."

The third article of the declaration of rights, they continued, "underwent long debates, and took Time in proportion to its importance; and we feel ourselves peculiarly happy in being able to inform you, that, though the debates were managed by persons of various denominations, it was finally agreed upon with much more Unanimity than usually takes place in disquisitions of this Nature."<sup>1</sup> They considerately maintained that it would be an affront to the people of the commonwealth to labor to convince them "that the Public Worship of God" had "a tendency to preserve a People from forsaking Civilization, and falling into a state of Savage barbarity." They subsequently stated that they "did not conceive themselves to be vested with Power to set up one Denomination of Christians above another; for Religion must at all Times be a matter between God and individuals."<sup>2</sup> but they found themselves obliged to form stringent oaths of office. Various matters were merely mentioned, as if mention by the convention was amply adequate to secure the contented acquiescence of the voter. Thus they alluded, by way of more formal sanction, to the judicial tenures, to the check of the council on the executive, to the limited continuance of existing laws and officers, to the powers of revision, and to the legislative process. Their

<sup>1</sup> *Journal of the Convention*, 218; Cf. *Journal of the Convention of 1820*, 430.

<sup>2</sup> *Ibid.*, 220.

constituents were told that the governor was "emphatically the representative of the whole people,"<sup>1</sup> and that the house of representatives was "intended as the Representative of the Persons, and the Senate of the property of the Commonwealth."<sup>2</sup>

Allegiance to the principle of representation according to population prompted a recognition of the inconsistency of granting representation to the small incorporated towns, and a prophecy that their new "method of calculation" would "give a more exact Representation, when applied to all the Towns in the State, than any that we could fix upon."<sup>3</sup> "An exact Representation would be impracticable even in a System of Government arising from the State of Nature, and much more so in a state already divided into nearly three hundred Corporations."<sup>4</sup> Thus, "with plainness and sincerity," they aimed at harmonizing the views of the public with their own propositions on the more important features of constitutional government, and with this matter of fact sponsorship they sent forth the proposed instrument of government to those in whom was vested the "undoubted *Right*, either to propose such Alterations and Amendments as you shall judge proper, or, to give it your own Sanction in its present Form, or, totally to reject it."<sup>5</sup> The frame of government thus completed and sub-

<sup>1</sup> *Journal of the Convention*, 219.

<sup>2</sup> *Ibid.*, 218.

<sup>3</sup> Cf. *Journal of the Convention of 1820*, 257. Cf. Action of Northampton, May 22, 1780: "And it is impossible for us to admit so black a thought, as to imagine that the convention had an intention, by their address, to beguile their constituents into a supposition, that provision was made in the frame of Government, for a representative of the persons, as well as for the property, of the Commonwealth, when really at the same time they were conscious that it was not so in fact; . . . ." *Hawley Papers*, II, Bancroft Collection.

<sup>4</sup> *Journal of the Convention*, 219.

<sup>5</sup> *Ibid.*, 219. Cf. *The Constitutional Propositions*, . . . Boston, 1853, p. 46.

<sup>6</sup> *Journal of the Convention*, 216.

mitted to the action of the sanctioning power, was such, both in contents and in historical position, as to demand attention.

In the constitution itself is found the justification of the opinions passed upon it, as well as the explanation of the pre-eminence granted it in the constitutional history of the period. Both in essence and in form it stands as a type of the best workmanship and the highest scholarship. In theory it embodied the growth of English freedom, the history of the English constitution, and the development in the outlying parts of the empire of organizations of local government fully adapted to subsist in relations other than those of an expanding monarchical state. The formation of this constitution followed, furthermore, the adoption of thirteen constitutions in other states,<sup>1</sup> and its framers thus were enabled to profit by the large amount of practical experience thus made available. The opportunity for excellent work was favorable; the leaders of the body to which this opportunity was presented were men of unusual training; and the result was a document whose character is attested by its use, with certain modifications, to the present day.<sup>2</sup> Embracing in its history such a period, it serves both as a summary of the past and as an introduction to the state constitutional history of the century succeeding its adoption. It is the first of the distinctly modern constitutions, as well as the last, with one exception,<sup>3</sup> of the revolutionary era.

<sup>1</sup> Each of the thirteen colonies, except Connecticut and Rhode Island, had framed a constitution; South Carolina and New Hampshire had each formed two before 1780; and Vermont also had formed one. Including the Massachusetts Constitution of 1778, thus far fourteen in all had been drafted and either put in force or submitted to popular vote.

<sup>2</sup> The separation of Maine from Massachusetts made necessary some alteration in the constitution; on this question fewer than one-fourth of the qualified voters gave any expression, and of 18,349 votes, 6,593 were against revision.

<sup>3</sup> The exception of New Hampshire is more one of chronology than anything else. The constituent work in that state was at the time recognized as a conscious imitation of that of Massachusetts.

That it approximated more nearly than its predecessors to the modern type appears in nothing more distinctly than in its form. For the first time the usual long series of miscellaneous and loosely connected articles gives way to a systematic arrangement of subjects and to a clear, if not rigid, differentiation of material on those general lines along which the functions of government are differentiated. Such is found in the several chapters comprised in the "frame of government," or body of the constitution. Preceding that, however, are two important parts of the document, the preamble and the declaration of rights.

The inclusion of a preamble made this constitution to differ from several others of the period;<sup>1</sup> and from those having a preamble this one is distinguished by the fact that use is made of these preliminary paragraphs not to justify the political theories of the Revolution, but to state the underlying principles of the government which was about to be instituted.<sup>2</sup> Thus, first, it is stated that the end of the institution and maintenance of government is "to secure the existence

<sup>1</sup> The constitutions of Delaware, Maryland, New Hampshire (1784), and Virginia, contained no preamble. Practically all of the constitutions to which reference is made in the following pages are to be found in Poore, *Charters and Constitutions*. The bill of rights of the Delaware constitution of 1776 is in 5 *American Archives*, II., 286, 287. The constitution proposed in New Hampshire in 1779 is in *Collections of the New Hampshire Historical Society*, IV., 154-161.

<sup>2</sup> The New Jersey preamble referred to the compact of government; alluded to the withdrawal of protection, the dissolution of government, the need of some government, and to the advice of the Continental Congress. The South Carolina preamble of 1776 uses in a political way such topics as the British claims, the extension of admiralty jurisdiction, the affairs in Massachusetts, the acts of Parliament, the use of force by the English, the dissolution of the Assembly, and the unjustifiable activity of Governor Campbell. The Pennsylvania, Vermont, and New Hampshire (1776) preambles suggest the basis of their authorization. The New York preamble quoted in full the Declaration of Independence, cited the resolution of July 9, 1776, of the N. Y. Provincial Congress, and quoted the resolution of May 31, 1776, of the same body, the latter including the resolution of the Continental Congress of May 15, 1776.

of the body-politic ;" and to assure the individuals therein the safe enjoyment of "their natural rights, and the blessings of life ;" the failure to attain which objects invests the people with a "right to alter the government, and to take measures necessary for their safety, prosperity and happiness." This body politic, which is "formed by a voluntary association of individuals," is further described as "a social compact,<sup>1</sup> by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good."<sup>2</sup> Such a body, "the people of Massachusetts," acknowledging "the goodness of the Great Legislator of the Universe," enter into "an original, explicit, and solemn compact with each other ;" and "agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS."

Having thus declared their conception of the nature of the state, a more extended statement is made of those principles of civil and religious relationship and of political privileges which are held to attach to the position of every man in civil society, and which cannot be considered subject to modification at the option of the government. The conditions on which man surrenders to the "body-politic" his "alienable" rights must be distinctly stated, and the inviolate character of his "inalienable" rights must be recog-

<sup>1</sup> Cf. Borgeaud, *Établissement et Révision des Constitutions*, Paris, 1893, 167.

<sup>2</sup> Cf. New Hampshire Declaration of Rights (1784), Art. 1. Cf. Virginia Declaration of Rights, Art. 3. Cf. Maryland Declaration of Rights, Art. 1: "That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole."

Mr. Simonds, quoting this paragraph in the Convention of 1853, said: "Here I recognize the principle of a government dividing itself up into two classes, the citizen covenanting with the whole people, and the whole people covenanting with the citizen." *Debates and Proceedings of the Convention of 1853*, I., 210. Cf. *Boston Town Records*, XXVI., 282.

nized.<sup>1</sup> The form of such recognition was already familiar to Englishmen, and the necessity of such had been repeatedly emphasized. That necessity, to be sure, was less when the people possessed all the powers of government than it was in the time of Charles or William; yet the incorporation of a declaration of rights into so many of the constitutions of the time throws into prominence the carefulness and the consistency of the men who framed them. Others than those of Massachusetts realized keenly the vital importance of a clear and abiding statement of the immunities and privileges of man in civil society.<sup>2</sup> Especially on these points did Massachusetts voice the general sentiment throughout the new nation, and in this connection most clearly did the framers of her constitution draw upon the work of other men.

One-half of the thirty sections of the Massachusetts declaration of rights aim in various ways at the establishment of civil liberty. The opening statement that "all men are born free and equal,"<sup>3</sup> and have certain natural, essential, and

<sup>1</sup> Cf. Virginia Declaration of Rights which asserts that all men "have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity;" Art. 1. Cf. Vermont Declaration of Rights, Arts. 1, 3. New Hampshire Declaration of Rights, (1784) Art. 3: "When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others; and, without such an equivalent, the surrender is void." *Ibid.*, Art. 4: "Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them."

<sup>2</sup> A Declaration of Rights was adopted by Delaware, Maryland, New Hampshire (1784), North Carolina, Pennsylvania, Vermont, and Virginia.

<sup>3</sup> As to this, Northampton, May 22, 1780, voted that "this is true only with respect to the right of dominion, and jurisdiction, over one another." *Hawley Papers*, II., Bancroft Collection.

Although the courts soon declared that the constitution prohibited slavery in Massachusetts, Hawley, in his "Criticism," wrote: "I fear it will take a Century, wholly to abolish and take away the inhuman, unjust and cruel practice, of enslaving our fellow men. Why therefore shall we affect to conceal and cover when we are too unwilling to annihilate and put an end to? Such disguises will

unalienable rights;" is followed by the inclusion among such of the right to possess and enjoy life, liberty, and happiness.<sup>1</sup> The enjoyment of these rights is to be guaranteed by law; whence arises the duty of the individual to "contribute his share to the expense of this protection;"<sup>2</sup> but the alienation of one's property is subjected to strict legal limitations. General warrants,<sup>3</sup> unreasonable searches,<sup>4</sup> and *ex post facto* laws,<sup>5</sup> are forbidden. Prompt, free, and complete

not remove the shame and just reproach while the iniquitous practice is notorious." *Hawley Papers*, II., Bancroft Collection. See Moore, *Notes on the History of Slavery in Massachusetts*. New York, 1866, 200-223.

<sup>1</sup> Art. I. In the report of October 28, 1779, this read: "All men are born equally free and independent, . . . ." *Journal*, 193.

The Virginia Declaration, Art. I, states: "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

The Vermont declaration is, "That all men are born equally free and independent, . . . ." Cf. the constitutions of Pennsylvania, New Hampshire, and for an omission of such cf. those of Maryland and North Carolina.

<sup>2</sup> Art. 10. Cf. Pennsylvania Declaration of Rights, Art. 8: "every member of society . . . . is bound to contribute his proportion towards the expence of that protection, . . . ." Cf. Vermont Declaration of Rights, Art. 9: "every member of society . . . is bound to contribute his proportion towards the expense of that protection, . . . ." Delaware Declaration of Rights, Art. 10: "That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto; . . . ." 5 *American Archives*, II., 286.

<sup>3</sup> Art. 14. Cf. Virginia Declaration of Rights, Art. 10; Vermont Declaration of Rights, Art. 11; North Carolina Declaration of Rights, Art. 11; New Hampshire Declaration of Rights (1784), Art. 19; Maryland Declaration of Rights, Art. 23; Pennsylvania Declaration of Rights, Art. 10; Delaware Declaration of Rights, Art. 17.

<sup>4</sup> Art. 14.

<sup>5</sup> Art. 24. Cf. Maryland Declaration of Rights, Art. 15; New Hampshire Declaration of Rights (1784), Art. 23; North Carolina Declaration of Rights, Art. 24; Delaware Declaration of Rights, Art. 11.

justice should be assured;<sup>1</sup> jury trial is not to be limited,<sup>2</sup> and attention is given to the process of the courts.<sup>3</sup> The right to bear arms<sup>4</sup> and the freedom of the press<sup>5</sup> are assured, and the usual position is taken against standing armies in time of peace<sup>6</sup> and against the unrestricted quartering of soldiers.<sup>7</sup>

<sup>1</sup> Art. 11. *Cf.* New Hampshire Declaration of Rights (1784), Art. 14: "Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property or character, to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws." *Cf.* North Carolina Declaration of Rights, Arts. 12, 13; Delaware Declaration of Rights, Art. 12. The privileges of habeas corpus are assured in the body of the Constitution, Chap. VI., Art. 7. *Cf.* Georgia Constitution, Art. 60; New Hampshire Constitution (1784). Poore, p. 1292.

<sup>2</sup> Art. 12, 15. *Cf.* Georgia Constitution, Art. 61; Maryland Declaration of Rights, Art. 19; New Hampshire Declaration of Rights, (1784) Arts. 15, 20, 21; New Jersey Constitution, Art. 22; New York Constitution, Art. 41; North Carolina Declaration of Rights, Art. 9; Pennsylvania Declaration of Rights, Arts. 9, 11; South Carolina Constitution, (1776) Art. 18; South Carolina Constitution, (1778) Art. 41; Vermont Declaration of Rights, Arts. 10, 13; Vermont Constitution, Sec. 22; Virginia Declaration of Rights, Arts. 8, 11; New Hampshire Declaration of Rights, (1779) Art. 7; Delaware Declaration of Rights, Arts. 13, 14.

<sup>3</sup> Arts. 12, 13, 26, 29. Thus, for instance, excessive charges for fines or bail are forbidden; *Cf.* Georgia Constitution, Art. 59; Maryland Declaration of Rights, Art. 22; New Hampshire Declaration of Rights, (1784) Art. 33; North Carolina Declaration of Rights, Art. 10; Pennsylvania Constitution, Sec. 29; Vermont Constitution, Sec. 26; Virginia Declaration of Rights, Sec. 9; Delaware Declaration of Rights, Art. 16.

<sup>4</sup> Art. 17. North Carolina Declaration of Rights, Art. 17; Pennsylvania Declaration of Rights, Art. 13; Vermont Declaration of Rights, Art. 15.

<sup>5</sup> Art. 16. *Cf.* Georgia Constitution, Art. 61; Maryland Declaration of Rights, Art. 38; New Hampshire Declaration of Rights, (1784) Art. 22; North Carolina Declaration of Rights, Art. 15; Pennsylvania Declaration of Rights, Art. 12; South Carolina Constitution, (1778) Art. 43; Vermont Declaration of Rights, Art. 14; Virginia Declaration of Rights, Art. 12; Delaware Declaration of Rights, Art. 23.

<sup>6</sup> Art. 17. *Cf.* Maryland Declaration of Rights, Art. 26; New Hampshire Declaration of Rights (1784), Art. 25; North Carolina Declaration of Rights, Art. 17; Pennsylvania Declaration of Rights, Art. 13; Vermont Declaration of Rights, Art. 15; Virginia Declaration of Rights, Art. 13; Delaware Declaration of Rights, Art. 19.

<sup>7</sup> Art. 27. *Cf.* Maryland Declaration of Rights, Art. 28; New Hampshire Declaration of Rights (1784), Art. 27; Delaware Declaration of Rights, Art. 21.

The defence of civil liberty being practically complete, a further series of statements was made relative to the location of sovereignty and to the exercise of political rights. Thus it is declared that "the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."<sup>1</sup> Similarly: "The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state;"<sup>2</sup> and as such power is thus vested all officers of government, "whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."<sup>3</sup> Naturally, the

<sup>1</sup> Art. 7. Cf. Maryland: "all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole." Poore, 817. Cf. North Carolina: "That all political power is vested in and derived from the people only." *Ibid.*, 1409.

Cf. Art. 4 of the Declaration of Rights of the New Hampshire proposed constitution, (1779): "The whole and entire power of government of this State is vested in, and must be derived from the people thereof, and from no other source whatsoever." *Collections of New Hampshire Historical Society*, iv., 155. Delaware Declaration of Rights, Art. 1: "That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole." Cf. Article on Connecticut in *New York Packet*, no. 12, Mar. 21, 1776.

<sup>2</sup> Art. 4. Cf. New Hampshire (1784): "The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state, . . . ." Poore, 1281.

Cf. Pennsylvania: "the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal." *Ibid.*, 1541.

Rufus Choate said in 1853: ". . . by 1776 or certainly 1780 we grasped completely the American idea that the people were the source of sovereignty; that they are equal; that they alone are to be represented in the popular branch of government, and that they are to be represented equally there." *Debates and Proceedings of the Convention of 1853*, I. 886.

<sup>3</sup> Art. 5. Cf. Maryland: "That all persons invested with the legislative or executive powers of government are the trustees of the public, and, as such, accountable for their conduct; . . . ." Poore, 817. Cf. New Hampshire, (1784): "All power residing originally in, and being derived from the people, all the

“people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good;”<sup>1</sup> to instruct their representatives; and to address the legislature.<sup>2</sup> The people are urged to practice a “frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality,” and “to have a particular attention to all those principles, in the choice of their officers and representatives:”<sup>3</sup> since “they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.”<sup>4</sup>

magistrates and officers of government, are their substitutes and agents, and at all times accountable to them.” Poore, 1581. Delaware Declaration of Rights, Art. 5.

“Proper Democracy is where the people have all the power in themselves, who choose whom they please for their head for a time, and dismiss him when they please; make their own laws, choose all their own officers, and replace them at pleasure.” “The Interest of America” by “Spartanus,” in *Freeman’s Journal*, no. 4, June 15, 1776.

*Cf.* Pennsylvania: “That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.” Poore, 1541.

Action of New Salem, February 1, 15, 1773: “we take it for Granted: that Governors are the trustees of Society: . . . We think Likewise that all trustees are in reason answerable to those who have Lodged a trust in their hands.” *Revolutionary Corresp.*, I., 676, 680. Bancroft Collection.

<sup>1</sup> Art. 19. *Cf.* New Hampshire Declaration of Rights (1784), Art. 32; North Carolina Declaration of Rights, Art. 18; Pennsylvania Declaration of Rights, Art. 16; Vermont Declaration of Rights, Art. 18.

<sup>2</sup> *Cf.* Maryland Declaration of Rights, Art. 11.

<sup>3</sup> Art. 18. *Cf.* Pennsylvania Declaration of Rights, Art. 14; *Cf.* Virginia Declaration of Rights, Art. 15; Vermont Declaration of Rights, Art. 16.

<sup>4</sup> Art. 18.

"All elections ought to be free;"<sup>1</sup> those eligible have an equal right both to elect and to be elected. But that those elected may not become oppressors, "the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life;"<sup>2</sup> while further consideration of the public service has the significant conclusion that "the idea of a man born a magistrate, law-giver, or judge, is absurd and unnatural."<sup>3</sup>

The legislature is the subject of certain articles, in which that branch is forbidden to pass any *ex post facto* laws<sup>4</sup> or to declare any subject guilty of treason or felony.<sup>5</sup> To suspend and to execute the laws is wholly within the competence of the legislature;<sup>6</sup> in each house freedom of speech is assured;<sup>7</sup> and frequent sessions are recommended.<sup>8</sup> An equally important declaration is the twenty-third article:

<sup>1</sup> Art. 9. Cf. Maryland Declaration of Rights, Art. 5; New Hampshire Declaration of Rights (1784), Art. 11; Pennsylvania Declaration of Rights, Art. 7; Vermont Declaration of Rights, Art. 8; Virginia Declaration of Rights, Art. 6; Delaware Declaration of Rights, Art. 6.

<sup>2</sup> Art. 8. Cf. Maryland Declaration of Rights, Art. 4, 31; North Carolina Declaration of Rights, Art. 20; Pennsylvania Declaration of Rights, Art. 6; Vermont Declaration of Rights, Art. 7. The theory of this was well expressed by Samuel Johnston in his letter from Halifax, N. C., April 20, 1776, to James Iredell: "After all it appears to me that there can be no check on the Representatives of the people in a democracy, but the people themselves; and in order that the check may be more efficient, I would have annual elections." Jones, *Defence of North Carolina*, 279, 280.

<sup>3</sup> Art. 6, Cf. Virginia Declaration of Rights, Art. 4.

<sup>4</sup> Art. 24.

<sup>5</sup> Art. 25, Cf. Maryland Declaration of Rights, Art. 16.

<sup>6</sup> Art. 20, Cf. Virginia Declaration of Rights, Art. 7; Delaware Declaration of Rights, Art. 7.

<sup>7</sup> Art. 21, Cf. Maryland Declaration of Rights, Art. 8; New Hampshire Declaration of Rights (1784), Art. 30.

<sup>8</sup> Art. 22, Cf. New Hampshire Declaration of Rights (1784), Art. 31; Delaware Declaration of Rights, Art. 8.

"No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature."<sup>1</sup>

Turning to matters of religion, it is stated to be "the duty of all men in society, publicly, and at stated seasons, to worship" God. In the same article perfect freedom is assured to each one to worship "in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship."<sup>2</sup> As has already been indicated, this, and espec-

<sup>1</sup> Cf. New Hampshire Declaration of Rights (1784), Art. 28; Maryland Declaration of Rights, Art. 12; North Carolina Declaration of Rights, Art. 16.

<sup>2</sup> Art. 2. Cf. Georgia Constitution, Art. 56; Cf. Maryland Declaration of Rights, Arts. 33, 34; Cf. New Hampshire Declaration of Rights (1784), Arts. 5, 6; Cf. New Jersey Constitution, Arts. 18, 19; Cf. New York Constitution, Art. 38; Cf. North Carolina Declaration of Rights, Art. 19; Cf. Pennsylvania Declaration of Rights, Art. 2; Cf. South Carolina Constitution (1778), Art. 38; Cf. Vermont Declaration of Rights, Art. 3; Cf. Virginia Declaration of Rights, Art. 16; Cf. Delaware Constitution, Art. 29; Cf. Delaware Declaration of Rights, Arts. 2, 3; Cf. New Hampshire Declaration of Rights (1779), Art. 5: "The future legislature of this State shall make no laws to infringe the rights of conscience, or any other of the natural, unalienable Rights of Men, or contrary to the laws of God, or against the Protestant religion." *Collections of the New Hampshire Historical Society*, IV., 155.

In the Mass. Convention of 1820 Mr. Dearborn, of Roxbury, said: "Of the constitutions of the several United States, those of this State and of Maryland were the only ones which were marked by bigotry and ecclesiastical intolerance. This was owing to peculiar circumstances existing at the time of their adoption. These circumstances are passed away." *Journal of the Constitution of 1820*, 171.

Speaking of this, Mr. Hubbard, in 1820, "denied that our happiness and good morals were owing to the third article; on the contrary that article grew out of our good morals. . . . No law was passed until 1800 to enforce this provision; so that it remained for twenty years a dead letter, . . ." *Ibid.* 397.

The Address of the Convention of 1820 stated: "It is known to us that the eminent men who framed the constitution under which we have lived bestowed on the only article of the declaration of rights which has occasioned much discussion among us the greatest attention." *Ibid.*, 623.

ially the succeeding article, occasioned, both in and out of the convention, a vigorous debate. The latter article is notable for its spirit of New England theocracy. Its provisions rest on the assumption that "good order and preservation of civil government, essentially depend upon piety, religion and morality;"<sup>1</sup> to secure which the people assert their right to direct the legislature to "authorize and require the several towns, parishes, precincts, and other bodies-politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily." The selection of public teachers is left to the towns, societies, or other bodies. The money paid by each man shall, if he require it, be used for the support of a teacher of his own denomination, "provided there be any on whose instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised." Equal protection of the law was accorded to all denominations of peaceable Christians, and the subordination of one sect or denomination to another was never to be established by law. The whole article was made still more tangible to each citizen by the action of the people in assuming to themselves the right to invest the legislature "with authority to enjoin upon all subjects an attendance upon the instructions of the public teachers aforesaid, at stated times

<sup>1</sup> Art. 3, as reported October 28, 1779, began: "Good morals being necessary to the preservation of civil society," the legislature has the "right, and ought, to provide at the expense of the subject, if necessary, a suitable support for the public worship of God, and of the teachers of religion and morals; and to enjoin upon all the subjects an attendance upon their instructions, at stated times and seasons; Provided there be any such teacher on whose ministry they can conscientiously and conveniently attend." The article then contained nothing further, except the clause, as in the text, on the disposal of money paid for such support. *Journal of the Convention*, 193.

and seasons, if there be any on whose instructions they can conscientiously and conveniently attend."

The conclusion of the declaration of rights as reported October 28, 1779, was as follows: "The judicial department of the State ought to be separate from, and independent of, the legislative and executive powers."<sup>1</sup> This theory of government had been vigorously supported; in it was supposed to be a safeguard of liberty; and to it in theory there was a strong prejudice. This made natural the development of the theory from the earlier crude statement to the following: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them. The executive shall never exercise the legislative and judicial powers, or either of them. The judicial shall never exercise the legislative or executive powers, or either of them: to the end it may be a government of laws and not of men."<sup>2</sup> While those parts of the declaration of rights pertaining to civil rights were a normal expression of free Englishmen of the time, while the utterances which it contained on political rights and on sovereignty were purely a definition of the Revolution, and while the provisions on religion were a not unnatural outcome of a Mass-

<sup>1</sup> Art. 31. The bill of rights of October 28, 1779, contained 31 articles, but articles 12 and 14 were combined in Art. 12 of the later draft; the later form, however, omitted the provision for a unanimous vote in jury trials.

<sup>2</sup> Georgia Constitution, Art. 1: "The legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other." Cf. Maryland Declaration of Rights, Art. 6; Cf. North Carolina Declaration of Rights, Art. 4; Cf. Virginia Declaration of Rights, Art. 5: "That the legislative and executive powers of the State should be separate and distinct from the judiciary; . . . ."

New Hampshire Declaration of Rights (1784), Art. 37: "In the government of this state, the three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept as separate from and independent of each other, as the nature of a free government will admit, or as is consistent with that claim of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity."

achusetts convention of the time, the tripartite division of government appears as one of the new and striking products of the eighteenth century.<sup>1</sup> Although owing its inception to no originality of the Americans, it was due to their clear understanding of political relations, to their insistence upon the most careful expression of those relations, that it at this time became a part of the constitutional system of the American commonwealths.<sup>2</sup> Such in theory, it was otherwise in fact; for the theory and the actual situation could rarely, if ever, coincide,<sup>3</sup> although in many points an approximate coincidence would be attained, and the independence, thus, of each branch of government assured.

The remainder of the constitution comprised the "frame of government," at the opening of which the position earlier stated was reaffirmed; there again the people "solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body-politic or state." The

<sup>1</sup> Joseph Story said in 1820: "Our whole system of government is novel. It is a great experiment in the science of politics. The very principle of representation and the theory of a division of powers is of modern origin, as are many of our dearest and most valuable institutions." *Journal of the Convention of 1820*, 290.

<sup>2</sup> *Journal of the Convention of 1820*, 267.

<sup>3</sup> Cf. Speech of Daniel Webster, in 1820: "Nor has it been found easy, nor in all cases possible, to preserve the judicial department from the progress of legislative encroachment. . . . As if Montesquieu had never demonstrated the necessity of separating the departments of government; as if Mr. Adams had not done the same thing, with equal ability, and more clearness, in his defence of the American Constitution; as if the sentiments of Mr. Hamilton and Mr. Madison were already forgotten; we see, all around us, a tendency to extend the legislative power over the proper sphere of the other departments. . . . If we look through the several constitutions of the states, we shall perceive that generally the departments are most distinct and independent, where the legislature is composed of two houses, with equal authority, and mutual checks. If all legislative power be in one popular body, all other power, sooner or later, will be there also." *Journal of the Convention of 1820*, 306, 307. Cf. *Ibid.*, 475, 476. Cf. J. Adams to R. Rush, May 14, 1821. *Works of John Adams*, X., 397. Cf. Elliot, *Debates*, II., 504, 505; III., 608.

organization of this commonwealth was along the lines indicated, and of the six chapters of the "frame" the first three were devoted, respectively, to the legislative, the executive, and the judicial power.

To the provision for a bicameral legislature was attached the grant to each house of a negative on the other. Thus assured of their favorite "check and balance" system<sup>1</sup>, the constructive work could proceed on the broad lines incident thereto. Yet their theories were accentuated in practice by the adoption for each house of a different basis of representation. The forty senators, thus, were assigned to several districts, coincident then with the counties for the sake of convenience,<sup>2</sup> in "the proportion of public taxes paid by the said Districts;" but with the limitations that there should never be less than thirteen districts, and that no district should ever be entitled to more than six senators.<sup>3</sup> The lower house, in distinction, was intended as "a representation of the people, annually elected, and founded upon the principle of equality." Its number was not fixed, but the principle of town representation was adopted, with a modification admitting the effect of the relative size of town populations. Thus, while a single representative was allowed to every town already incorporated, no town thereafter<sup>4</sup> was to be incorporated or be entitled to a representative unless it contained 150 "rateable polls,"<sup>5</sup> each increase of 225 over

<sup>1</sup> Cf. Elliot, *Debates*, II., 103.

<sup>2</sup> A single exception to this was the union of Nantucket and Dukes in a single district.

<sup>3</sup> In the convention of 1820, Mr. Flint, of Reading, said: "Had it not been for six words in the constitution, relative to the apportionment of senators, the people never would have called this Convention." *Journal of the Convention of 1820*, 133. Cf. *Debates and Proceedings of the Convention of 1853*, 845.

<sup>4</sup> Cf. *Debates and Proceedings of the Convention of 1853*, 869.

<sup>5</sup> In the convention of 1820 it was proposed to make population instead of polls the basis of representation. Of the computation on polls, Mr. Lawrence then

which number entitled the town to an additional representative. Differing in this respect, each house, however, was elected annually, and by virtually the same electors, the senators being chosen by the male inhabitants of the respective senatorial district, twenty-one years of age, owning within the commonwealth a freehold estate of the annual income of £3, or any estate of the value of £60. The electors of the lower house must have similar general qualification, and must have resided in the town where they voted for one year next preceding the election; and in the matter of the alternative property qualification, the freehold estate of £3 must in this case lie in the town of residence. Turning to the qualifications of the legislators, a senator must have been an inhabitant of the commonwealth for five years immediately preceding his election, he must at the time of his election be a resident of the district choosing him, and he must further own a freehold estate in the commonwealth of £300, or an estate, either personal or mixed, of £600. In a representative it was essential that for one year immediately preceding his election he should have been both a resident and an owner of a freehold estate of £100 in the town he represented; an alternative property qualification was the ownership of any "rateable estate" valued at £200. On ceasing to be thus qualified a loss of his seat would result.

"presumed this basis never would have been adopted, if there had been at the time of the framing of the constitution any provision for the periodical enumeration of the inhabitants. Polls did not before that time form the basis of representation. By the laws of 1692 and 1776, the number of freeholders was the basis. There was at the time of the formation of the constitution no mode of ascertaining the number of inhabitants; but there was of rateable polls." *Journal of the Convention of 1820*, 244. Speaking upon this matter in 1820, Joseph Story, of Salem, later Chief Justice, uttered a noteworthy sentence: "I have lived long enough to know that in any question of government, something is to be yielded up on all sides. Conciliation and compromise lie at the origin of every free government; and the question never was and never can be, what is absolutely best, but what is relatively wise, just and expedient." *Ibid.*, 289.

The quorum of the senate was fixed at sixteen and of the house at sixty; the processes of popular election were indicated, as were also the principal powers of the legislature. Chief among these last was the power to erect all courts "for the hearing, trying, and determining of all manner of crimes, offenses, pleas, processes, plaints, actions, matters, causes, and things whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting or residing, or brought within the same; whether the same be criminal or civil, . . . capital or not capital, . . . real, personal, or mixt; . . ." Provision was made for a decennial valuation of estates. The trial of impeachments was vested in the senate alone. The usual legislative function of law-making was expanded into an enumeration of the proper objects, such as the public welfare and defence, the creation and control of an administrative and of a military system, the provision of a revenue, and the disposal, under executive warrant, of the public funds.<sup>1</sup> The usual privileges of legislative bodies were assured, and provision made for annulling an executive veto by the passage of the returned bill by a two-thirds vote in each house.

The executive of Massachusetts was, as were the legislators, elected for a single year; electors of the latter were entitled to vote for the former, but more than one phase of the philosophy of the time was emphasized in the provisions that the chief executive should have been an inhabitant of the state for seven years immediately preceding his election, that he should own a freehold of £1000 in the state, and that he should "declare himself to be of the Christian religion." The calling, proroguing, and dissolving of the legislature, the

<sup>1</sup> In the convention of 1820 Josiah Quincy, referring to the convention of 1780, said: "They had no difficulty in providing that all the powers which were then possessed by the Provincial legislature, should continue to be exercised by the General Court of the Commonwealth, with the limitation which before existed." *Journal of the Convention of 1820*, 73.

power of pardon, the appointment of all judicial officers, of sheriffs, coroners, and registers of probate, of the attorney-general and solicitor-general, and the power to grant, by warrant, the public money, were vested in the governor; but in each instance with a limitation which presented a peculiar institution. From the senate were chosen nine men by the two houses; their seats remained vacant; if nine did not consent to the new service the completion was effected by the election of men at large. No more than two councillors were to be taken from any one senatorial district; and the nine, with the lieutenant-governor, were to advise the governor, and "hold and keep a Council, for the ordering and directing the affairs of the commonwealth, according to the laws of the land."<sup>1</sup>

Completing the executive department, the third chapter provided also for the annual election by joint ballot of senators and representatives, of a secretary, treasurer and receiver-general, a commissary, naval officers, and notaries public. The secretary was to be responsible for the keeping of the state records, and no one was to be treasurer and receiver-general more than five years successively, in order, as was quaintly stated, that the citizens "may be assured, from time to time, that the monies remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, . . . ."<sup>2</sup>

Under the legislative powers provision was made for the erection of courts. Chapter three added a variety of minor regulations, such as that the probate courts should be held on

<sup>1</sup> Cf. *Debates and Proceedings of the Convention of 1853*, I., 502. *Journal of the Convention of 1820*, 209. Cf. Brooks Adams, *Emancipation of Massachusetts*, 306.

<sup>2</sup> Northampton, May 22, 1780, expressed the wish that the clause on the treasurer's term of office "should be expressed in such Manner that the People may understand the Reason why the Treasurer cannot with Safety to the Commonwealth hold his Office more than five years." *Hawley Papers*, II., Bancroft Collection.

fixed days at such places "as the convenience of the people shall require," that the powers of justices of the peace should not continue for more than seven years without renewal, that the tenure of all officers holding by commission should be expressly stated therein, and that all judicial officers, unless otherwise directed by the constitution, should hold during good behavior, subject only to removal by the governor, with the consent of the council, and on the address of both houses of the legislature. The only further step of importance was the inclusion in this chapter of a duty foreign to an independent judiciary and inconsistent with the theory of the tripartite division of government. It was decreed as follows: "Each branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the Supreme Judicial Court, upon important questions of law, and upon solemn occasions."<sup>1</sup>

One typical peculiarity of the Massachusetts constitution was the careful manner in which the corporate privileges and property rights of the President and Fellows of Harvard College, acquired through the Act of General Court of 1642, and by gifts and grants at various other times, were confirmed to them.<sup>2</sup> The continuance of the instituting act in force throughout the revolutionary period was recognized, and the officers were named who should represent the com-

<sup>1</sup> In 1820 Mr. Story said that "it was exceedingly important that the judiciary department should, in the language of the constitution, be independent of the other departments; and for this purpose, that it should not be in the power of the latter to call in the judges to aid them for any purpose. If they were liable to be called on, there was extreme danger that they would be required to give opinions in cases which should be exclusively of a political character." *Journal of the Convention of 1820*, 489. Cf. *Ibid.*, 629.

<sup>2</sup> Josiah Quincy in the Convention of 1820: "The gentleman's argument proceeded upon the principle that the constitution made some alteration in the charter of Harvard College. But it was not so. . . . The great men who formed the constitution of 1780, knew how sacred pre-existing chartered rights were." *Journal of the Convention of 1820*, 72.

monwealth on the Board of Overseers, as during the continuance of the province charter the governor, deputy-governor, and magistrates had done; but it was further "provided that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts-Bay."<sup>1</sup>

The fifth chapter<sup>2</sup> contained a further section not found in the earlier constitutions. This was a general exhortation to a diffusion of "wisdom and knowledge, as well as virtue," to the encouragement of agriculture, arts, commerce, and manufactures, to the support of institutions of learning, and to the development of "public and private charity, industry, and frugality, honesty, . . . . good humor, and all social affections and generous sentiments among the people."<sup>3</sup>

The sixth, and concluding, chapter included a variety of matters, such as the forms of oaths of office, of writs, commissions, and the enacting style, the continuance, until altered or made void, of all laws previously "adopted, used and approved in the Province, Colony or State of Massachusetts Bay," and the continuance in office, until the appointment of successors, of officers serving under commission of the existing government. The unbroken existence of courts and other branches of government was assured until the new system went into operation. The disabilities incident to plurality of offices were stated. Provision was also made for grant-

<sup>1</sup> Chap. V., Sec. 1, Art. 3.

<sup>2</sup> The fourth chapter was devoted to the election, term, commission, and tenure, of delegates to the Continental Congress.

<sup>3</sup> Into the New Hampshire Constitution of 1784 this section was introduced almost bodily, although with slight changes, as of "economy" for "frugality," and of "sobriety" for "good humor."

ing to the inhabitants both of towns and of unincorporated plantations an opportunity, in the year 1795, to express "their sentiments on the necessity or expediency of revising the Constitution," an affirmative action on which was to be followed by the summoning of a constitutional convention.

### *§ 3. Submission of the Constitution*

The new constitution and the accompanying address of the constituent convention were immediately distributed to the several boards of selectmen, and for a second time the people of Massachusetts were called upon to exercise the highest function of a state in the ratification or rejection of a proposed form of government. Again the vigor and the breadth of the political education of the people were apparent and were influential. As was the case two years before, the action was much more than one of assent or of dissent. The refusal to consider the instrument *en bloc* led to a multitude of local discussions on each paragraph, resulted in a bewildering variety of action, and occasioned the production of a mass of material, controversial and explanatory, by which the towns aimed to establish the reasonableness of their views and votes. Considering the large majority secured against the constitution of 1778 by public criticism, the still larger mass of criticisms and queries and suggestions directed against the constitution of 1780 rendered the successful ratification of the latter document problematical. However, owing to the striking variety of preferences and criticisms with reference to the several parts of the document, a dangerously large negative vote was approached in only a few cases; and fortunately even in those the towns often expressed their willingness to yield their opposition rather than by it to cause the defeat of the last step toward reconstruction.

The process of submission was made sufficiently simple by the undisturbed continuance of the local governments; the

action of the town-meeting was direct and effective, and even for a work of so important a nature there was little delay aside from that occasioned by the adjournments of the town-meetings to afford to their committees time for the preparation of their reports. In the adoption of these reports, of varying size and excellence, the towns formally and deliberately expressed their views; some reached the end more simply by single direct votes, but the number of such latter cases was small enough to give to the series the type of the former. In their mode of action<sup>1</sup> and report<sup>2</sup> there was general similarity; in the contents of the returns there were shown the extremes of divergence; and by the material of the reports a wide range of political theory and practice was covered. Hardly a point escaped the notice of the local politician. Thus even the address of the convention drew from Medway the admission that, although no part of the constitution, it was "not onely Polite but very Plosible."<sup>3</sup> Bellingham, with an effort at sarcasm, likewise voted: "We agreed the Address set forth before the Bill of Rights is no Part of the forme of Government."<sup>4</sup> So, too, the section on Harvard University, although a portion giving rise to no

<sup>1</sup> But *Cf. Gloucester*, May 22, 1780: "The Constitution was read, & those for accepting were desired to walk round the Meeting House to the Eastward & those against to walk the other way—48 Walked to Eastward, none the other way. Col. Foster and Capt. Sargent said they objected to it." *Lincoln Papers*.

<sup>2</sup> As a type of several, *Cf. So. Brimfield*, whose selectmen, May 29, 1780, wrote on the back of a printed copy of the Constitution: "pursuant to the Resolve of the Convention we have Laid this Constitution and Frame of Government before our town and they have after mature Consideration voted as we have inserted in the foregoing pages." *Mass. Archives*. E.g., the vote of Stockbridge is enclosed in the Moderator's letter of appointment to one of the Delegates; the letter ends: "P. S.—Your Family is well."

<sup>3</sup> Dated June 6, *Mass. Archives*. The material attributed to the *Mass. Archives* without volume or page has been drawn from a package of manuscripts which had not, at the time of examination, been bound or numbered.

<sup>4</sup> April 24—June 5, *Mass. Archives*.

strenuous contest, occasioned in Petersham the fear that the institution would endanger the liberties of the public through its excess of corporate riches, while its rejection by Bellingham was coupled with a suggestion that the accounts of the institution be published. The further observation was added: "We have little knowledge of said University."<sup>1</sup> In the treatment of more important matters there was an evident thoroughness, from Medway's proposal of a governor's message at every session of the assembly to Chelsea's vote, "That the Scheme of Rotation be adopted in the principal Department of Government."<sup>2</sup>

The lack of a bill of rights contributed materially toward the rejection of the constitution of 1778; in 1780 some of the sharpest discussions were occasioned by the contents of the new bill of rights. Especially did the third article arouse the public. Ashfield bluntly declared that this was "unconstitutional to human Nature, And no Precept in y<sup>e</sup> word of God to Support it." To the people was given the power to invest the legislature with authority to require local provision for "the institution of the public worship of God, and of public instruction in piety, religion, and morality;" and to enjoin attendance upon such services. This, with its context, the town of Middleborough declared to be "unmeaning or otherwise admits of Different meanings." With more dignity Granville objected, because "True Religion has evidently declined & been corrupted by the interference of Statemen & Politicians." Gorham opposed the article on the ground that it was an invasion of property rights.<sup>3</sup> Bellingham demanded freedom of worship and conscience, and opposed compulsory rates for church support. Such rates, too, were opposed in the *Massachusetts Spy*,<sup>4</sup> by

<sup>1</sup> Report attested, June 5, 1780, *Mass. Archives*.

<sup>3</sup> May 9-June 1, *Mass. Archives*.

<sup>3</sup> *Boston Gazette*, No. 1346; June 12, 1780.      <sup>4</sup> No. 471, May 18, 1780.

"Libertatis Amici," who threatened that thousands would refuse submission to such an establishment. In the Boston town-meeting this third article occasioned "much but candid debate,"<sup>1</sup> which ended in the proposal of the article in a modified form, and in the statement of the position of Boston as a recognition of the freedom of the minority, while stress was also laid upon the necessity of some religious establishments for all, and for which all should pay.<sup>2</sup> But even the modification suggested by Boston was opposed. Reasons for such opposition were promptly given by "A Freeholder," who, insisting upon the incompetency of the civil powers to deal with religious questions, opposed both compulsory payments and legislative control of the clergy.<sup>3</sup> The vigorous debate in the convention on the question of the civil establishment of religion was repeated in the press. Such writers as "Irenaeus, a Member of Convention," defended article 3, and his attention was mainly given to answering the "extemporaneous gabblings" of "Philanthropos," the opponent of the article, who would suggest that the effort to legislate for conscience and religion implied a charge of insufficiency against God's law. "This savors of fifth monarchy enthusiasm, that all civil government ought to be pulled down, that king Jesus alone may rule: . . . "<sup>4</sup>

<sup>1</sup> Letter of Samuel Adams, *Adams Papers*, Bancroft Collection. He wrote also: "The Town of Boston have been in Meeting three Days upon this important Affair. The Town have unanimously agreed to the Constitution with a few Alterations (I think for the better) except the Third Article."

<sup>2</sup> *Mass. Archives*; Cf. *Boston Gazette*, No. 1342, May 15, 1780.

<sup>3</sup> *Boston Gazette*, No. 1343, May 22, 1780.

<sup>4</sup> *Boston Gazette*, Nos. 1349, 1350, July 3, 10, 1780. Articles by "Philanthropos" appeared in the *Boston Gazette*, Nos. 1350, 1353, 1355, 1356, dwelling on the method, not the fact, of supporting worship. He cites Penn., N. Y., N. J., and Va. on confining the civil powers to civil matters. "Irenaeus" has articles in *Boston Gazette*, Nos. 1349, 1350, and one continued article in *Boston Gazette*, Nos. 1365, 1370, 1373, 1374, Oct. 23, Nov. 27, Dec. 18, 25, 1780. He claims a victory for the supporters of Article 3.

The bill of rights in its sixteenth article stated that the liberty of the press was essential to freedom, and so should not be restrained. This drew from the town of Dunstable<sup>1</sup> a plea for the restraint of the press, lest they "Dishonour god by printing heresy;" and Chelsea<sup>2</sup> asked for the article the following addition: "But as its freedom is not such as to Exempt any printer or printers from being answerable for false Dafamitory and abusive Publications." The other tendency, that toward unrestrained expression, was represented by Stoughton's<sup>3</sup> proposed addition of liberty of speech, by Milton's<sup>4</sup> inclusion of freedom of speech in town-meetings, and by Boston's insistence upon freedom of speech for public men, "an essential and darling right of every member of a free state."<sup>5</sup> The position of the towns on the general subject of absolute personal freedom was indicated from another point of view in the various votes occasioned by the article on the writ of *habeas corpus*. With abundant demands for the fullest toleration of personal activity, there appeared at points a lamentable absence of breadth. Thus a strong and wide expression was given to the demand for the qualification of oaths of office by the insertion of the word "Protestant" either before or in place of the word "Christian." The town of Lexington<sup>6</sup> presented a long reason for inserting this "word, which took Rise from the *pious, noble and truly heroic Stand*, which *Luther* and the first Reformers, . . . made," and Roxbury<sup>7</sup> voted that such insertion "seems to us necessary to secure the peace and tranquility of the State, as well as to the promotion of that Religion which our venerable Forefathers suffered everything but death, to establish."

<sup>1</sup> May 15-30, 1780, *Mass. Archives.*

<sup>2</sup> May 9, 23, June 1, 1780, *Ibid.*

<sup>3</sup> May 24-31, 1780, *Mass. Archives.*

<sup>4</sup> May 22, 1780, *Ibid.*

<sup>5</sup> May 12: *Boston Gazette*, no. 1342, May 15, 1780. The action of Boston, in full, is in *Boston Town Records*, xxvi., 125-135.

<sup>6</sup> May 22, June 5, 1780, *Mass. Archives.*

<sup>7</sup> May 17, 1780, *Ibid.*

The important question of the suffrage qualification drew forth a series of proposals expressing mainly the relative importance attributed in each locality to property and to polls. It was usually a matter of degree; but again there were instances in which a property qualification was not even given consideration. Thus, while Wrentham<sup>1</sup> voted simply, "that the representatives elected in each town ought to be Representatives of the property as well as the persons," the town of Richmond<sup>2</sup> would ask for no qualification but the possession of a certificate of "sober Life and Conversation" given to the voter by the selectmen. The town of Colerain<sup>3</sup> would grant the suffrage to every male of full age who should be recognized as "a friend to the Independance of said State & of Sober Life and Conversation," and the extreme was reached by Stoughton<sup>4</sup> when, in connection with the inconsistent proposal that the suffrage should be granted to all resident, tax-paying males of full age, the town declared: "Ye right of election is not a civil; but it is natural right, which ought to be consider'd as a principle corner-stone in y<sup>e</sup> foundation for y<sup>e</sup> frame of Government to stand on; consequently it is unsystematical and contrary to y<sup>e</sup> rules of architecture to place, or make it dependent on y<sup>e</sup> frame, . . . ."

The narrow range of influence of many of the views at this time brought forward, limited strictly the results attainable therefrom. Thus the constitution, as established, did not greatly differ from the constitution of the convention either in regard to freedom of conscience, freedom of expression, or the suffrage. Equally without definite results were the many proposals to alter the provisions relative to representation. The constitution passed from submission to promulgation with no change even in this part, with reference

<sup>1</sup> May 8, 26, 1780, *Mass. Archives.*

<sup>2</sup> May 29, 1780, *Ibid.*

<sup>3</sup> May 26, 1780, *Ibid.*

<sup>4</sup> May 24-31, 1780, *Ibid.*

to which so many towns proposed abundant alterations. Their proposals, to be sure, consisted in a variety of mathematical statements; of this character were the larger number of schemes presented, although in the history of the movement note should be made of the action of those towns which insisted upon the propriety and the justice of according representation to every town.<sup>1</sup> In addition to such a claim, the town of Bellingham, for instance, would grant two representatives to every town of 400 taxable polls; three to a town of 800 such; four to one of 1,600; and five, the maximum representation, to a town of 3,200 taxable polls. The town of Monson also took five as the largest representation to be granted to the most populous towns, and would grant fewer representatives to the other towns in proportion "to their bigness." The town of Medway proposed that eight should be the largest number of representatives allowed;<sup>2</sup> and there was frequently a recognition of the fitness of allowing to such towns as Boston an especially large representation. Monson would not limit to Boston the maximum representation, and Oakham<sup>3</sup> would allow more than one representative only to Boston and five or six other seaport towns of some size; while Lanesborough would recognize three grades and give to Boston, as in the constitution, four representatives, to the six towns next in size two representatives each, and to all other towns only a single representative each. At the same time the ratio of representation was subjected to numerous schemes of revision; and abandonment of the long established unit of representation was even

<sup>1</sup> *E.g.*, Mansfield, Norton, Wilbraham, Wrentham Bellingham.

<sup>2</sup> Giving 1 representative for 100 voters, 2 for 300 voters, 3 for 600, 4 for 1000, 5 for 1500, 6 for 2100, 7 for 2800.

<sup>3</sup> Oakham made a second proposal, assigning one representative to all towns, 2 representatives to towns of 500 ratable polls, 3 to towns of 1000, 4 to towns of 1500, etc.

threatened. Presumably with laudable motives, the town of New Salem suggested a house of not over 200 members from as many districts, and claimed that on such an entirely new arrangement could be established a plan of permanence.<sup>1</sup> But amid these inventions appeared a distinct type in Athol, which town conservatively recommended the reestablishment of the laws of 1770 concerning representation. The proposals of future constitutional changes and the efforts to revive earlier practices alike were fruitless. Excellence of theory without sufficient ballots was unavailing; a mass of opinion was suggestive and at some time might prove useful; but for the present the constitution of 1780 was to stand as the embodiment of what the men of Massachusetts regarded as the highest and truest political conceptions of their day. Not only was it so in regard to the points mentioned, but also in regard to all points at issue. Even the many demands for radical change in the construction of the legislative branch effected no result;<sup>2</sup> and in the qualifications for office holders no change was made, in spite of Middleborough's pungent comment: "We find that money makes Senators and not men: . . . ."

The action of the people in their consideration of the proposed form of government thus involved expression upon all matters of theory and of practice from the beginning to the end of the political philosophy of the time. Although ineffectual, the activity of the towns was of more than transitory significance. It expressed the trend of public thought; but it did more. A view of the activity of the year can-

<sup>1</sup> Likewise Mendon proposed a house of representatives from as many districts as there were members.

<sup>2</sup> On this point West Springfield and Southborough voted to abolish the senate; Westminster, Middleborough, Athol, Oakham, Walpole, Bellingham and Medway would abolish the council; Petersham, Athol and Bellingham would discard a governor. Petersham evolved a plan of giving to each house a negative on the other for seven days, to be followed by a joint session.

not be concluded without reference to the frequent and outspoken assertions of local independence.<sup>1</sup> Thus there were repeated demands for the establishment of a registry of deeds and of a probate court in every town;<sup>2</sup> the election and control of the appropriate officers therefor was considered a proper function of the town,<sup>3</sup> and there are indications, as well, of a desire to increase the prominence of the county as an electoral and administrative unit at the sacrifice of some of the functions of the larger unit.<sup>4</sup> The beginnings of constitutional disintegration and the prevalence of pronounced divergence of views, nevertheless, failed to produce the unfortunate result which they seemed to portend.<sup>5</sup> Especially

<sup>1</sup> Cf. vote of Lee, March 9, 1779, "that we hold ourselves bound to support the Civil Authority of this State for the sum of one year, and Bound to obey the laws of this State." Quoted in Hyde, *Centennial History of Lee*, 161. Berkshire county, throughout the period, was continually asserting local rights and hampering the provincial government. Thus, on August 26, 1778, a convention of town delegates had been held at Pittsfield, by which a petition was sent to the General Court asking that a special convention should be called to form a constitution and bill of rights. They admitted that their county was the first in which the royal courts had been closed, but they denied that they were a "mobbish, ungovernable, refractory, licentious, and dissolute People." If their appeal should not be granted, they would petition the Committee of Safety, and if given no satisfaction by them, they suggested that "there are other States, which have Constitutions who will we doubt not, as bad as we are, gladly receive us, . . ." This was signed by 26 delegates from 18 towns, and was read in the council, October 16, 1778. *Mass. Archives*, 184: 196-198.

<sup>2</sup> Thus, as to one point, or both; Bellingham, Medway, Wrentham, Holliston, Scituate, Warwick; the town of Lanesborough voted "That there be a Court of Probate in every regiment." Cf. Daggett, *History of Attlebororugh*, 123; Stoughton, *Mass. Archives*, 160: 266-277.

<sup>3</sup> The action of Bellingham on this is especially plain.

<sup>4</sup> Thus Wilbraham would have the counties elect annually the justices of the Superior Court, the judges of probate, and the justices of the peace. Wilbraham proposed the election by counties of justices of the Inferior Court, justices of the peace, and judges of probate; and also urged an annual election of judges of the Superior Court. Bellingham suggests annual county assemblies for the election of all county officers.

<sup>5</sup> Cf. *Works of John Adams*, IX., 510, 511.

striking was the result in view of the movements from among which examples have been drawn.<sup>1</sup> Equally noteworthy was it that during this period Samuel Adams could write that the "great business was carried through with much good humor by the people, even in Berkshire, where some persons led us to expect it would meet with many obstructions." Yet in his next sentence he indicated one potent cause of the final harmony when he wrote: "Never was a good constitution more needed than at this juncture."<sup>2</sup>

The constitutional convention had, on March 2, adjourned for a recess which should cover the period allowed for the popular consideration of its work; the concluding session of the convention opened, on June 7, in the Brattle Street meeting-house at Boston. The membership was somewhat changed by the presentation of the credentials of new members,<sup>3</sup> but the earlier organization and practice in deliberative bodies allowed an immediate consideration of the prin-

<sup>1</sup> But Hawley in his criticism wrote: "I am well informed Gentlemen that a majority of the voters in divers towns have been induced to give their sanction to the said form of Government with all its imperfections from an earnest desire that some form of Government may be more firmly established in the State, than that which at present is exercised, and that, unless we should immediately unite in [some] plan we shall fall into absolute anarchy and never unite [in] any form whatever. I am Sirs, fully satisfied that the danger of such an event, has been unreasonably and extravagantly magnified by divers individuals."

Referring to the resolution of March 2, 1780, and supposing an illiberal interpretation thereof by the Convention, Hawley made this further attack: "The case in truth will be That the State of the Massachusetts Bay, will have an Unadvised, unconsulted, undiscussed, undigested, tautological, ragged, inconsistent, and in some parts unmeaning, not to say futile plan, established in it, for its constitution of Government." *Hawley Papers*, II., Bancroft Collection.

<sup>2</sup> Samuel Adams to John Adams, July 10, 1780. Wells, *Life of Samuel Adams*, III., 103. So Pittsfield in its instructions expressed the opinion that the Constitution would be accepted by two-thirds of the voters, "as the Reins of Government are so relaxed & this County in particular so long deprived of all Law." Cf., *Mass. Hist. Soc. Proceedings*, 2 Series, VIII., 290.

<sup>3</sup> New members reported as follows: 10 on June 7, 12 on June 8, 3 on June 9, 1 on June 12, 1 on June 13; *Journal of the Convention*, 170-178.

cipal, and practically the sole, work of the session, the reception of the returns of the action of the towns and the possible preliminaries of promulgation. The returns received were at once referred to a committee,<sup>1</sup> which, on July 8 and July 12, made preliminary reports, stating on the latter date that returns from 174 towns had been received, and expressing the difficulty of making immediately a complete report.<sup>2</sup> The method of local procedure, which involved the possibility of a distinct vote by each town on every section of the constitution, rendered necessary an elaborate tabulation by the committee.<sup>3</sup> From this they were able to report a total

<sup>1</sup> At first a committee of 5; 7 were added, and later 12 were added; finally, on June 12, the number was further increased by 5. *Ibid.*, 170-178.

<sup>2</sup> On June 13 it was voted that thereafter no more returns be received. *Journal of the Convention*, 178. On June 14 the returns of 2 towns were received, and on June 15 those of 3 towns. *Ibid.*, 179.

<sup>3</sup> Large portions of the Committee's manuscripts are in the *Mass. Archives*, although not bound or numbered at the time the writer used them.

Thus there are posted in one set, but without totals completed, the returns for Plymouth, Barnstable and York Counties. Provision is made for 14, 10 and 17 towns respectively, but some returns, especially from Barnstable County, were not given.

Another set was stated to contain the returns of Middlesex, Dukes and Nantucket Counties; the word Middlesex was crossed off, but evidently the table contains returns simply from Middlesex County. The reports are from 42 towns. In the table one column throughout is given to the votes in case the amendment proposed by the town voting did not prevail; 30 double columns are given to the votes on the Bill of Rights, and 70 are given to the votes on the body of the Constitution. Of these towns, only two, Cambridge with 41 votes, and Townshend with 29 votes, gave a unanimous vote throughout in the affirmative. As to the numbers participating in these acts, it may be noted that Charlestown recorded 21 voters, "Newtown" 49, Chelmsford 103 and Concord 147.

The table for Hampshire County shows a total of over 1800 voters; in few cases was the negative vote over 100. Article 3 of the Bill of Rights was accepted by a vote of 1135 to 237. A vote conditioned on the success of their amendments was in the affirmative, 115 to 51, although peculiarly defective.

The table for Worcester County shows over 2500 voters; returns from 44 towns are scheduled, among which are only three deficiencies. Article 3 of the Bill of

vote of 5654 for the constitution and 2047 against it.<sup>1</sup> With the detailed report before it the convention proceeded to the last stages of the process in hand. Each article of the declaration and of the "frame" was read separately before the convention and on each article in turn the question was put: "Is it your opinion that the people have accepted of this article?—Which, upon every individual article, passed in the affirmative by a very great majority."<sup>2</sup> The convention refused to take a vote by yeas and nays on the constitution "in gross," but a motion "that the People of the State of Massachusetts Bay have accepted the Constitution as it stands in the printed form, submitted to their revision . . ." was "passed in the affirmative by a very great majority."<sup>3</sup> The formalities of sanction being thus completed, the convention further,<sup>4</sup> apart from provision for prospective promulgation, arranged for the inauguration of the first administration under the new forms. On this closing day the convention relaxed sufficiently to ask the legislature "to

Rights was accepted, by a vote of 1506 to 803. In case amendments should not prevail the vote was 482 to 65 in the affirmative.

The table for Suffolk County includes 24 towns; if amendments prevailed, the vote was 592 to 34; if they did not prevail, 969 to 168. Boston voted for article 3 of the Bill of Rights, 277 to 140, and for its own amendments of the same, 420 to 140. Boston's vote for the Constitution in case amendments should not prevail, was 747 to 140.

<sup>1</sup> *Mass. Archives*, 223: 192; cf., *Mass. Archives*, 223: 198-201.

<sup>2</sup> *Journal of the Convention*, 180.

<sup>3</sup> *Ibid.*, 180.

<sup>4</sup> The Convention Resolves of June 16, as to the acceptance of the Constitution and the designation of the last Wednesday in October as the day for the inauguration of the new government, with the signatures of Pres. Bowdoin and Sec'y Barrett, are in *Mass. Archives*, 171: 180-182.

The same, attested by Pres. Bowdoin and bearing the House endorsements as well as the Council endorsements of June 17 as to a committee thereon; and bearing also the committee report as to the election day preacher, are in *Mass. Archives*, 228: 448-451. Cf. *Mass. Archives*, 228: 447, 458. These resolves appeared in the *Mass. Spy*, no. 479, July 13, 1780.

order the provision for the usual entertainment had on the days of General Election, to be made on the last Wednesday in October next,"<sup>1</sup> but at the same time the members showed their balance and devotion in refusing to pass a resolution asking the legislature to pay from the public treasury for the travel and attendance of members of the convention.<sup>2</sup> Thanksgiving and prayer by the Rev. Mr. Thatcher concluded the proceedings of the day and of the convention, and the body thereupon dissolved. Of its acts in this last session the essential parts were announced to the public, under date of the day of adjournment, in a proclamation<sup>3</sup> by President Bowdoin, stating the acceptance of the constitution by two-thirds of those voting, and announcing further the appointment of the first Monday in September as the day of the election of governor, lieutenant-governor, council and senate; of any day in October ten days before the last Wednesday for the election of representatives; and, finally, of the last Wednesday in October as the day established for the first meeting of the Great and General Court and for the organization of the new government.

<sup>1</sup> *Journal of the Convention*, 183.

<sup>2</sup> *Ibid.*, 183.

The text is in *Ibid.*, 186, 187.

## CHAPTER IX

### THE TRANSITION COMPLETED

IN the same month in which the ratification of the new constitution was authenticated, the General Court passed an act, approved by the council, June 24, 1780,<sup>1</sup> which provided for the secure completion of the last step in the transition by giving to the council the right to exercise powers of sufficiently wide extent to meet any further emergency. Upon this body was conferred, for the period ending with the operation of the constitution, practically complete control of civil and military affairs; to it was given the authority to issue paper money, and to negotiate loans, under restrictions both as to amount and as to term,<sup>2</sup> on the credit of the commonwealth; and to it, as well, was given the discretionary power to call at an earlier date a special session of the new General Assembly, the formation of which was incident to the operation of the new constitution, and the first meeting of which had been appointed, in the plan for the new organization of government, for the last Wednesday in October. No exigency requiring such modification of the original plan arose, and the period of such further provisional direction of all commonwealth affairs by the council was, after some four months, brought easily to an end, after the chief body had prepared for the succession by the issue of the usual precepts for the choice of a governor, lieutenant-governor, senate and house of representatives. After the ordinary

<sup>1</sup> *Mass. Archives*, 228: 464-466.

<sup>2</sup> Limited to twelve months, and not to exceed £60,000.

processes of election<sup>1</sup> and return, the representatives met in Boston at the appointed time.

John Hancock,<sup>2</sup> the newly elected governor, was then inaugurated. By him and by the legislators were taken the appropriate oaths of office. Before them all the customary election sermon was preached by Dr. Cooper, in "the Old Brick Meeting-House," upon the highly significant text from Jeremiah: "And their congregation shall be established before me; and their nobles shall be of themselves; and their Governor shall proceed from the midst of them."<sup>3</sup> The proceedings of the day were, finally, given balance and completeness by an "entertainment" in Faneuil Hall, with its round of thirteen toasts.

The formal installation of the government under the first constitution of the commonwealth having been thus effected,<sup>4</sup> the more detailed work was at once begun. On the last day of the month, the house and the council appointed a committee to inform the governor that they were organized and ready to proceed to business.<sup>5</sup> The governor on the same day formally addressed the legislative bodies in an

<sup>1</sup> A letter to Samuel Adams, dated September 3, 1780, states: "To-morrow will probably usher in the first election of Government, under the New plan . . . Lieut. Gvr. probably Cushing, your friend Warren however is a Candidate, But he has too much integrity, steadiness, consistency, & the genuine principles of a republican to make much head in times like these." *Adams Papers*, Bancroft Collection.

<sup>2</sup> Cf. Samuel Adams, Philadelphia, October 17, 1780, to his wife: "I had reason to believe that Mr. Hancock would be the Governor. I am disposed to think, that my Fellow Citizens had upright Views in giving him their Suffrages. Many Circumstances have combined to make his election appear to be politically necessary; . . . ." A variation reads: "honest and upright." *Adams Papers*, Bancroft Collection.

<sup>3</sup> Bullock, *Centennial of the Constitution*, 35.

<sup>4</sup> An account of the inauguration, with a list of the members of the new assembly, appeared in *Boston Gazette*, no. 1366, October 30, 1780.

<sup>5</sup> *Mass. Archives*, 229: 455.

inaugural, bearing largely upon matters naturally incident to such an occasion.<sup>1</sup> With the completion of the preliminary routine the new officers of government entered upon the regular and active performance of their functions, and the transition was virtually completed. Much, to be sure, remained to be accomplished. The completion of the judiciary establishment and the organization of the executive department were still to be effected; but all essentials were attained in the constitution which provided, either directly or by definite delegation, for the exercise of all powers of government, and which afforded an ample basis for subsequent development. The consideration of that development involves the history of Massachusetts from the time of the establishment of the commonwealth to the present day.<sup>2</sup>

<sup>1</sup> The address was printed in *Boston Gazette*, no. 1367, November 6, 1780.

<sup>2</sup> The reader should consult the pamphlet of 67 pages, *Constitution of the Commonwealth of Massachusetts. Published by the Secretary of the Commonwealth. Boston, 1896*, which gives the various amendments and cites numerous judicial decisions bearing upon the constitution.

## NOTE

The following list is given as a means of identification and not as a bibliography. More newspaper and manuscript collections than indicated have been consulted, although not used in the present work. It should be stated also that practically everything in print bearing upon this period, both in Massachusetts and in the other colonies, has been consulted; secondary material, however, has proved of little service. Use has been made of the libraries of the American Antiquarian Society, the Connecticut Historical Society, the Essex Institute, Harvard University, the Massachusetts Historical Society, the New York Historical Society, the Historical Society of Pennsylvania, and of the libraries of several other corporations, as well as of the Library of Congress. Especial mention should be made of ample facilities accorded by the staff of the Lenox Library, now merged in The New York Public Library, Astor, Lenox and Tilden Foundations. Certain citations from the *Adams Papers* are necessarily incomplete, but more detail would be of little value, as the collection is soon to be rearranged and improved.

## LIST OF TITLES

*A. Manuscripts, original and copied*

The volumes indicated by the first seven titles are in the Lenox Library of The New York Public Library, Astor, Lenox and Tilden Foundations. For detailed description, see Sabin, J. F., *Library of the late Hon. George Bancroft*, n. p. [1892].

*Samuel Adams Papers*, 9 vols.

*Joseph Hawley Papers*, 2 vols.

*Letters of Thomas Hutchinson to Israel Williams*, 1 vol.

*Revolutionary Correspondence*, 3 vols.

*Ezra Stiles Papers*, 1 vol.

*Autograph Letters of Joseph Warren*, 1 vol.

*W. V. Wells Papers, Samuel Adams and the American Revolution*, 3 vols.

*Lincoln Papers*. Transcripts from town records of Mass., collected by Wm. Lincoln, in the Library of the American Antiquarian Society, Worcester, Mass.

*Massachusetts Archives*. A Collection of Original Documents, in the Bureau of Archives, Office of the Secretary of the Commonwealth, Boston, Mass.

*Sparks Papers*. A Collection of Documents formed by Jared Sparks, in the Harvard College Library. See *Library of Harvard University. Bibliographical Contributions*, edited by Justin Winsor, Librarian. No. 22. *Calendar of the Sparks Manuscripts in Harvard College Library*, by Justin Winsor. Cambridge, 1889.

Stevens, B. F. *Facsimiles of Manuscripts in European Archives Relating to America, 1773-1783, with Descriptions, Editorial Notes, Collations, References, and Translations*. London, 1889- A copy is in the Library of Columbia University.

*B. Newspapers*

*Boston Evening Post, The.* T. and J. Fleet, Boston.

*Boston Gazette, and the Country Journal, The.* Edes and Gill [Benj. Edes; Benj. Edes and Sons.] Boston [Watertown].

*Connecticut Courant, The.* [The Connecticut Courant, and Hartford Weekly Intelligencer.] Eben. Watson [Watson and Goodwin] Hartford.

*Connecticut Gazette; and the Universal Intelligencer.* [The New London Gazette.] Timothy Green, New London.

*Connecticut Journal, and New Haven Post-Boy, The.* [The Connecticut Journal.] T. and S. Green, New Haven.

*Continental Journal, and Weekly Advertiser, The.* J. Gill, Boston.

*Essex Gazette, The.* [New England Chronicle; or, the Essex Gazette, The. New England Chronicle, The. Independent Chronicle, The, q v.] S. and E. Hall [Powers and Willis], Salem [Cambridge, Boston].

*Essex Journal and New Hampshire Packet, The.* [The Essex Journal.] J. Mycall and H. W. Tinges [J. Mycall], Newburyport.

*Freeman's Journal, or New Hampshire Gazette, The.* Benj. Dearborn, Portsmouth.

*Independent Chronicle, The.* [Independent Chronicle & Universal Advertiser, The.] Powars and Willis [Nath'l Willis], Boston.

*Massachusetts Gazette and Boston Post Boy and Advertiser, The.* Mills and Hicks, Boston.

*Massachusetts Gazette and the Boston Weekly News Letter, The.* Richard Draper [Margaret Draper], Boston.

*Massachusetts Spy, The.* [The Massachusetts Spy or, Thomas' Boston Journal. The Massachusetts Spy; or, American Oracle of Liberty.] I. Thomas, Boston [Worcester].

*New England Chronicle, The.* Powars and Willis, Boston.

*New York Journal; or, the General Advertiser, The.* J. Holt, New York.

*New York Packet, and the American Advertiser, The.* S. Loudon, New York.

*Pennsylvania Evening Post, The.* Benj. Towne, Philadelphia.

*Rivington's New York Gazetteer; or the Connecticut, New Jersey, Hudson's River and Quebec Weekly Advertiser.* [Rivington's Gazette, or the Connecticut, Hudson's River, New Jersey and Quebec Weekly Advertiser. Rivington's New York Loyal Gazette. Rivington's New York Royal Gazette.] J. Rivington, New York.

*Salem Gazette, and Newbury and Marblehead Advertiser, The.* E. Russell, Salem.



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